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ENTRIES

OR

PLEADINGS,

In many of the CASES Reported

By the Right Honourable *ROBERT* Lord *RAY-*
MOND, late Lord Chief Justice of the Court
of King's Bench, referring to those CASES.

FOR THE

ILLUSTRATION and better UNDERSTANDING
the same, Collected and translated into ENGLISH by

GEORGE WILSON Esq; Serjeant at Law.

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P L E A D I N G S

P L E A D I N G S
T O

C A S E S

In Lord RAYMOND'S REPORTS.

Pleas before the Lord the King at Westminster of Easter Term in the thirteenth Year of the Reign of William the Third, King of England, &c.

West Mayor of Banbury against West. *Ld. Raym. 674.*

Middlesex, (to wit) **B**E it remembered that hereto-Declaration
fore, to wit, in the Term of for a false Re-
the *Holy Trinity* last past, be- turn of a
fore the Lord the King at *Mandamus*.

Westminster came *Samuel West*, Gentleman, Mayor of the Borough of *Banbury* in the County of *Oxford*, by *James Long* his Attorney, and brought here into the Court of the said Lord the King then there his certain Bill against *John West* in the Custody of the Marshal, &c. in a Plea of Trespass upon the Case; and there are Pledges of prosecuting, to wit, *John Doe* and *Richard Roe*; which said Bill follows in these Words, to wit, *Middlesex*, to wit, *Samuel West*, Gentleman, Mayor of the Borough of *Banbury* in the County of *Oxford*, complains of *John West* in the Custody of the Marshal of the *Marshalsea* of the Lord the King, being before the King himself, for that, to wit, That whereas the Borough of *Banbury* in the County of *Oxford* aforesaid is an antient Borough, and in the same Borough for many Years now last past there hath been, and yet continues to be a Mayor of the same Borough yearly chosen: And whereas all the Charters, Books, Records, Muniments

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and

PLEADINGS TO THE CASES.

and Ensigns of Magistracy of the said Borough of *Banbury*, do belong and appertain, and for divers Years now last past have belonged and appertained to the Place and Office of the Mayor of the said Borough: And also whereas the said *Samuel West* lately before the Feast of Saint *Michael* the Archangel, to wit, on *Monday* the fourth Day of *September* (being the first *Monday* in the Month of *September*) in the eleventh Year of the Reign of the Lord *William* the Third, now King of *England*, &c. at *Banbury* aforesaid in the County of *Oxford* aforesaid was duly elected, and on the same Feast of Saint *Michael* the Archangel was duly sworn and admitted into the Place and Office of Mayor of the Borough of *Banbury* aforesaid, to be continued in that Office from the same Feast of Saint *Michael* the Archangel for one whole Year from thence next following; and by reason thereof, the Charters, Books, Records, Muniments and Ensigns of Magistracy of the Borough aforesaid belong and appertain to the said *Samuel West*, and ought to be, and remain in his Custody during the whole Time of his Mayoralty there: And whereas on the thirtieth Day of *September* in the eleventh Year aforesaid, and continually afterwards hitherto, all the Charters, Books, Records, Muniments and Ensigns of Magistracy of the Borough of *Banbury* aforesaid, which belong and appertain to the Place and Office of Mayor of the same Borough, were and yet are in the Custody and Possession of the said *John West* at *Banbury* aforesaid in the County of *Oxford* aforesaid, and the said *Samuel West* on the said thirtieth Day of *September* in the eleventh Year aforesaid there requested the said *John West* to deliver the said Charters, Books, Records, Muniments and Ensigns of Magistracy of the Borough of *Banbury* aforesaid to the said *Samuel West*: Nevertheless the said *John West* then and there and often afterwards unduly, unrighteously and unjustly and injuriously refused to deliver those Charters, Books, Records, Muniments and Ensigns of Magistracy to the said *Samuel West*, to the no small Damage and Grievance of him the said *Samuel West*: And thereupon the said *Samuel West* for the more speedy obtaining the said Charters, Books, Records, Muniments and Ensigns of Magistracy of the Borough of *Banbury* aforesaid afterwards, to wit, on the seventeenth Day of *April* in the Term of *Easter* in the 12th Year of the Reign of the Lord the now King, obtained and prosecuted from the Court of the said Lord the King before the King himself (the same Court being then at *Westminster* in the County of *Middlesex*) a certain Writ of the

PLEADINGS TO THE CASES.

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the said Lord the King of *Pluries Mandamus* directed to The Writ of
the aforesaid *John West*, by which said Writ reciting, that *Mandamus*.
whereas there were then lately delivered into, and then
remained in the Custody of the said *John West* divers Char-
ters, Books, Records, Muniments and Ensigns of Magistra-
cy belonging and appertaining to the Borough of *Bunbury*
aforesaid in the said County of *Oxford*, which ought to be
delivered to the said *Samuel West* for the Use and Benefit of
the same Borough; and the said *Samuel*, then Mayor of
the Borough aforesaid, often demanded of the said *John*
West the aforesaid Charters, Books, Records, Muniments
and Ensigns of Magistracy belonging and appertaining to
the Borough aforesaid for the Use and Benefit of the said
Borough; and the said *John West* well knowing but little
regarding the Premises, unjustly detained the said Char-
ters, Books, Records, Muniments and Ensigns of Magi-
stracy belonging to the said Borough in his Custody and
Power, and hath unjustly refused to deliver the same Char-
ters, Books, Records, Muniments and Ensigns of Magi-
stracy aforesaid to the said *Samuel*, in Contempt of the said
Lord the King, and to the no small Damage and Grievance
of him the said *Samuel*, and to the manifest Injury of his
State, as by his Complaint the said Lord the King hath re-
ceived Information: Therefore the said Lord the King
willing that due and speedy Justice should be done in that
Behalf to the aforesaid *Samuel*, as was just, commanded the
said *John West*, as he had several Times commanded him,
firmly enjoining him that immediately after the Receipt of
that Writ he should deliver or cause to be delivered all and
singular the Charters, Books, Records, Muniments and
Ensigns of Magistracy belonging to the Borough aforesaid,
and being in his Custody, to the said *Samuel West* for
the Use and Benefit of the same Borough, or should signi-
fy to the said Lord the King Cause to the contrary, lest
through the Default of the said *John West* Complaint
should again come to him the said Lord the King; and
in what Manner the said *John West* should execute that
Command of the said Lord the King he should make to
appear to the said Lord the King at *Westminster* on *Friday*
next after three Weeks of *Easter* then next following, un-
der the Penalty of eighty Pounds, (remitting the said Writ
of the said Lord the King to him;) which said writ after-
wards and before the Return thereof, to wit, on the 19th
Day of *April* in the said twelfth Year of the Reign of the
said Lord the now King was delivered to the said *John West*
to be executed in Form of Law, to wit, at *Westminster*
aforesaid

PLEADINGS TO THE CASES.

The Return.

Averment
that the Plain-
tiff was duly
chosen May-
or.

aforesaid in the said County of *Middlesex*; nevertheless the said *John West* the said Charters, Books, Records, Muniments and Ensigns of Magistracy belonging to the said Borough of *Banbury* hath not delivered, or caused to be delivered to the said *Samuel West*, according to the Exigency of the said Writ: But the said *John West* well knowing the Premises, and further contriving and falsely and maliciously intending to aggrieve him the said *Samuel West* in this Behalf, and to deprive him of the Custody and Use of the said Charters, Books, Records, Muniments and Ensigns of Magistracy belonging to the said Borough of *Banbury* through the whole Time of his Mayoralty there, on the Day of the Return of the said Writ, to wit, the said *Friday* next after three Weeks of *Easter* in the abovesaid 12th Year of the Reign of the said Lord the now King falsely and maliciously returned to the said Lord the now King in the Court of him the said Lord the King before the King himself (the same Court being then at *Westminster* in the said County of *Middlesex*) his Answer to the Writ aforesaid; by which said Answer so returned the said *John West* certified to the said Lord the King, that divers Records and Ensigns of Magistracy of the Borough of *Banbury* aforesaid were delivered to him the said *John West* as Mayor of the said Borough, and by reason thereof came to the Hands of him the said *John West*, and then remained in his Custody upon that Occasion, and not otherwise, for the Use and Benefit of the said Borough, according to the Custom of the said Borough used from Time whereof the Memory of Man is not to the contrary; and that no Charters, Books or Muniments in the said Writ named, which by reason of the Office of him the said *John West*, were ever in his Custody, ought to be delivered to the said *Samuel West*: And the said *John West* further certified, that the said *Samuel West* in the said Writ mentioned, at the Time of the Date, or the Teste, or the issuing of the said Writ, in the said Writ mentioned, or of any of them, was not nor ever afterwards was, nor then existed, Mayor of the Borough of *Banbury* aforesaid, and for that Reason he neither could nor ought to deliver the Charters, Books, Records, Muniments and Ensigns of Magistracy of the Borough aforesaid, or any of them, to the said *Samuel West*, as by the said Writ and the Return thereof affiled and remaining upon Record in the said Court of the said Lord the now King, before the King himself at *Westminster* aforesaid, more fully appears; where in Truth and in Fact he the said *Samuel West* in Manner and Form aforesaid was duly chosen, sworn

PLEADINGS TO THE CASES.

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sworn and admitted into the Place and Office of Mayor of the Borough of *Banbury* aforesaid in the County aforesaid, as by the said Writ is above supposed, to wit, at *Banbury* aforesaid in the County of *Oxford* aforesaid; and that he the said *Samuel* before the Time of the Date and issuing forth of any Writ of *Mandamus* in this Behalf, to wit, on the said 30th Day of *September* in the 11th Year of the Reign of the said Lord the now King aforesaid, was and continually afterwards hitherto hath been and yet is Mayor of the Borough of *Banbury* aforesaid, to wit, at *Banbury* aforesaid in the County of *Oxford* aforesaid; and by reason thereof the Charters, Books, Records, Muniments and Ensigns of Magistracy of the Borough aforesaid, ought to be delivered to him the said *Samuel* as Mayor of the Borough aforesaid; and where in Truth and in Fact the said *John West*, neither at the Time of the Date, or of the issuing forth of any Writ of *Mandamus* by him the said *Samuel West* in this Behalf obtained, nor at any Time afterwards hitherto was or existed Mayor of the Borough of *Banbury* aforesaid; and where in Truth and in Fact the said *John West* at the Time of the Date, obtaining and issuing forth of the said Writ of *Mandamus* of him the said *Samuel West* in this Behalf, and continually afterwards hitherto hath had and hath in his Hands divers Charters, Books and Muniments belonging to the said Borough; by Pretence of which said false Return, and of the Premisses, the said *Samuel West* is not only deprived of the Custody and Use of the said Charters, Books, Records, Muniments and Ensigns of Magistracy of the Borough of *Banbury* aforesaid, and of his Remedy for his obtaining the same, but also hath expended great Sums of Money in the Obtaining and Prosecution of the said Writ of *Mandamus*, and by Occasion of the Premisses, is very much injured, to the Damage of him the said *Samuel West* of 400*l*. And thereupon he brings Suit, &c.

And that Defendant was not Mayor.

And now here at this Day, to wit, *Wednesday* next after Imparlance. fifteen Days of *Easter* in this said Term, until which Day the said *John* had leave to imparl to the said Bill, and then to answer, &c. before the Lord the King at *Westminster* come as well the said *Samuel West* by his Attorney aforesaid, as the said *John* by *Francis Hayes* his Attorney: And the said *John* defends the Force and Injury when, &c. and saith, that the said *Samuel* ought not to have or maintain his said Action thereof against him, because he saith, that the said *Samuel West* at the Time of the Date or Telle, or issuing forth of the said Writs, or of any of them, was not, nor at any Time afterwards hitherto hath been or existed

Plea in Bar.

PLEADINGS TO THE CASES.

isted Mayor of the Borough of *Banbury* aforesaid in the County of *Oxford* aforesaid; by which he the said *John* in his Answer to the Writ aforesaid in the said Declaration mentioned (among other Things) hath returned and certified, that the said *Samuel West* in the said Writ mentioned, at the Time of the Date or Teste, or of the issuing forth of the said Writs in the said Writ mentioned, or of any of them, was not, nor at any Time afterwards hath been, nor then existed, Mayor of the Borough of *Banbury* aforesaid, and for that Reason he neither could nor ought to deliver the Charters, Books, Records, Muniments and Ensigns of Magistracy of the Borough aforesaid, or any of them, to him the said *Samuel West*, as by the said Declaration is supposed; and this the said *John* is ready to verify: Wherefore he the said *John* prays Judgment if he the said *Samuel* ought to have or maintain his said Action thereof against him, &c. And the said *Samuel* saith, that he by any Thing by the said *John* above in Pleading alleged ought not to be barred from having his said Action against him the said *John*, because he says, that the said Plea by the said *John* in Manner and Form aforesaid above pleaded, and the Matter in the same contained, are not sufficient in Law to bar him the said *Samuel* from having his said Action thereof against the said *John*; to which said Plea he the said *Samuel* hath no Necessity, neither is he bound by the Law of the Land in any Manner to answer; and this he is ready to verify: Wherefore for want of a sufficient Answer in this Behalf, he the said *Samuel* prays Judgment, and his Damages by Occasion of the said Premises, to be adjudged to him, &c.

Demurrer.

Joinder in
Demurrer.

And the said *John* saith, that the Plea aforesaid by him the said *John* in Manner and Form aforesaid above pleaded, and the Matter in the same contained, are good and sufficient in Law to bar him the said *Samuel* from having his said Action against him the said *John West*; which said Plea, and the Matter in the same contained, he the said *John* is ready to verify and prove, as the Court, &c. And because the said *Samuel* hath not answered to the said Plea, nor hath hitherto in any Manner denied it, he the said *John* as before prays Judgment, and that the said *Samuel* may be barred from having his said Action thereof against him the said *John*, &c. But because the Court of the said Lord the King now here is not yet advised to give Judgment of and concerning the Premises, Day thereupon is given to the Parties aforesaid before the Lord the King.

Curia ad-
visare vult.

PLEADINGS TO THE CASES.

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King at *Westminster*, until next after to hear Judgment of and concerning the Premises, for that the Court of the said Lord the King now here is not yet, &c.

Pleas before the Lady the Queen at Westminster of the Term of Saint Michael in the first Year of the Reign of our Lady Ann Queen of England, &c.

Booth against Johnson. Reported in *Ld. Raym.* 838. by the Name of Gould against Johnson.

England, (to wit) **T**HE Lord William the Third, late King of England, &c. sent to his right trusty and well-beloved *Thomas Trevor*, Knight, his Chief Justice of the Bench, his Writ close in these Words, (to wit) *William the Third* by the Grace of God, of England, Scotland, France and Ireland King, Defender of the Faith, &c. To his right trusty and well-beloved *Thomas Trevor*, Knight, his Chief Justice of the Bench, greeting: Because in the Record and Process, and also in the giving of Judgment of a Plaint which was in our Court before *Edward Nevill*, Knight, and his Companions, then our Justices of the Bench aforesaid, by our Writ, between *Thomas Johnson* and *Mary* his Wife, Administratrix of the Goods and Chattels which were *Sylvanus Rowley's* Gentleman, who died intestate, as it is said; and *Ann Booth*, late of *Westminster* in the County of *Middlesex*, Widow, of a Plea of Trespass upon the Case, as it is said, manifest Error hath intervened, to the great Damage of her the said *Ann*, as we have received from her Complaint: We willing that the Error (if any there shall have been) to be corrected in due Manner, and compleat and speedy Justice to be done to the Parties aforesaid in this Behalf, command you, that if Judgment thereof be given, then that you send the Record and Process aforesaid, with all Things touching the same, to us, under your Seal, distinctly and openly, and this Writ, so that we have them from the Day of Saint Michael in three Weeks, wheresoever we shall then be in England, that the said Record and Process being inspected, we may further do thereupon for the Correcting the Error, that which of Right and according to the Law and Custom of our Realm of England ought to be done. Witness *Thomas* Archbishop of *Canterbury*, and the Rest of the Guardians and Justices of the Kingdom at *Westminster*.

PLEADINGS TO THE CASES.

minster the 8th Day of *July* in the 13th Year of our
Reign.

Layton.

*The Answer of Thomas Trevor, Knight, the Chief Justice
within mentioned.*

THE Record and Process of the *Plaint* whereof *Men-*
tion is within made, with all Things touching the
same, I send before the Lord the King wheresoever, &c.
at the Day within contained, in a certain Record to this
Writ annexed, as I am within commanded.

Thomas Trevor.

*Pleas inrolled at Westminster before Edward Nevill, Knight,
John Powell, Knight, and John Blencowe, Knight, Jus-*
tices of the Lord the King of the Bench of the Term of
Easter in the thirteenth Year of the Reign of the Lord
William the Third by the Grace of God, of England,
Scotland, France and Ireland, King, Defender of the
Faith, &c. Roll 358.

Action upon
a special Pro-
mise to pay
for Lodging,
&c. of two
Children, by
Plaintiffs as
Administra-
tors.

Middlesex, (to wit) ANN Booth late of *Westminster* in
the County aforesaid, Widow, was
attached to answer *Thomas Johnson* and *Mary* his Wife,
Administratrix of the Goods and Chattels which were *Syl-*
vanus Rowley's deceased, of a Plea of *Trespass* upon the
Case, &c. And whereupon the said *Thomas* and *Mary*, by
Charles Chambers their Attorney complain, that whereas
the said *Ann* on the first Day of *June* in the Year of our
Lord 1685, at *Westminster* in the County aforesaid, in Con-
sideration that the said *Sylvanus* in his Life-time, at the
special Instance and Request of the said *Ann*, would re-
ceive into his Dwelling-house, situate in *Highbowne* in the
County of *Hertford*, one *Christopher Cripps*, a Child of the
said *Ann*, and one *William Cripps*, another Child of the
said *Ann*, as Guests, with the said *Sylvanus*, and would
find and provide for the same *Christopher* and *William* Meat,
Drink, Washing and Lodging, and all other Things fit-
ting, convenient and necessary, assumed upon herself, and
to the said *Sylvanus* in his Life-time then and there faith-
fully promised, that she the said *Ann* would well and faith-
fully pay and satisfy to the said *Sylvanus* as much Money
as the said *Sylvanus* should reasonably deserve to have for
the same, for such Time as the said *Christopher Cripps* and
William

William Cripps should remain as Lodgers with the said *Sylvanus* in his said House, when she should be thereunto afterwards required : And the said *Thomas* and *Mary* in Fact say, that the said *Sylvanus* in his Life-time, confiding in the Promise and Undertaking of the said *Ann* in Form aforesaid made, afterwards to wit, on the 29th Day of *September* in the Year of our Lord 1685 aforesaid, received the said *Christopher Cripps*, a Child of the said *Ann*, into his said House, and that the said *Christopher* remained in the said Dwelling-house of him the said *Sylvanus* from the said 29th Day of *September* in the Year of our Lord 1685 aforesaid, for the Space of six Years then next following at *Highbowne* aforesaid : And that he the said *Sylvanus* in his Life-time found and provided for the said *Christopher Cripps* Meat, Drink, Washing and Lodging, and all other Things fitting, convenient and necessary for the whole Time aforesaid ; and that the said *Sylvanus* in his Life-time afterwards, to wit, on the first Day of *October* in the Year of our Lord 1685 aforesaid, received the said *William Cripps*, the other Child of her the said *Ann*, into his said House ; and that the said *William* remained in the said Dwelling-house of him the said *Sylvanus* from the said first Day of *October* in the Year of our Lord 1685 aforesaid, for the Space of seven Years then next following : And that he the said *Sylvanus* in his Life-time found and provided for the said *William Cripps* Meat, Drink, Washing and Lodging, and all other Things necessary and convenient for the whole Time aforesaid : And they the said *Thomas* and *Mary* further in Fact say, that the said *Sylvanus* in his Life-time reasonably deserved to have eighty Pounds of lawful Money of *England* for the said Meat, Drink, Washing and Lodging, and other Things fitting, necessary and convenient for the said *Christopher*, for the Space of six Years so as aforesaid found and provided ; and that the said *Sylvanus* reasonably deserved to have other eighty Pounds of the like lawful Money of *England* for the said Meat, Drink, Washing and Lodging, and other Things fitting, necessary and convenient for the said *William*, for the Space of seven Years so as aforesaid found and provided, whereof the said *Ann* had Notice. And also whereas the said *Ann* afterwards, to wit, on the first Day of *April* in the Year of our Lord 1695, at *Westminster* aforesaid, in Consideration that the said *Sylvanus* in his Life-time, at the special Instance and Request of the said *Ann* had found and provided for *Christopher Cripps* and *William Cripps*, certain Children of her the said *Ann*, other Meat, Drink, Washing, Lodging, Apparel,

PLEADINGS TO THE CASES.

Apparel, and other Necessaries, for the Space of other six Years then past, and at the like Instance and Request of her the said *Ann* had expended and laid out divers Sums of Money in the Tuition and Instruction of them the said *Christopher* and *William*, assumed upon herself, and to the said *Sylvanus* then and there faithfully promised, that she the said *Ann* would well and faithfully pay and satisfy to the said *Sylvanus* so much Money as he the said *Sylvanus* reasonably deserved to have for the said Meat, Drink, Washing, Lodging, Apparel, and other Necessaries last mentioned, by the said *Sylvanus* for the said *Christopher* and *William* so as aforesaid found and provided, and also so much Money as the said *Sylvanus* for the Tuition and Instruction of them the said *Christopher* and *William* had expended and laid out, when she should be thereunto afterwards required: And the said *Thomas* and *Mary* in Fact say, that the said *Sylvanus* in his Life-time reasonably deserved to have one hundred Pounds of lawful Money of *England* for the said Meat, Drink, Washing, Lodging, Apparel, and other Necessaries by him the said *Sylvanus* in his Life-time for the said *Christopher* and *William* for the Space of Time aforesaid last mentioned found and provided, as before is set forth: And that he said *Sylvanus* in his Life-time, for the Tuition and Instruction of them the said *Christopher* and *William*, expended and laid out another hundred Pounds of the like lawful Money, whereof the said *Ann* then and there had Notice. And also whereas the said *Ann* afterwards, to wit, on the second Day of *April* in the Year of of our Lord 1605 aforesaid, at *Westminster* aforesaid, was indebted to the said *Sylvanus* in his Life-time in another hundred Pounds of lawful Money of *England*, for other Meat, Drink, Washing and Lodging, and other Things fitting, necessary and convenient by the said *Sylvanus* in his Life-time for the said *Christopher Cripps* and *William Cripps*, the Children of her the said *Ann*, at the special Instance and Request of her the said *Ann*, for the Space of other six Years then past found and provided, and also for divers Sums of Money by the said *Sylvanus* for the said *Christopher* and *William*, at the like Instance and Request of her the said *Ann*, before that Time expended and laid out; and being thereof so indebted, the said *Ann* afterwards, to wit, on the same Day and Year at *Westminster* aforesaid, in Consideration thereof assumed upon herself, and to the said *Sylvanus* in his Life-time then and there faithfully promised that she the said *Ann* would well and faithfully pay and satisfy to the said *Sylvanus* the said one hundred Pounds last

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last mentioned, when she should be thereunto afterwards requested. And also whereas the said *Sylvanus* in his Life-time, that is to say, on the third Day of *April* in the Year of our Lord 1695 abovesaid, at *Westminster* abovesaid, accounted together with the said *Ann* concerning divers Sums of Money to the said *Sylvanus* in his Life-time by the said *Ann* owing and unpaid, and upon that Account the said *Ann* was found in Arrear towards the said *Sylvanus* in his Life-time in forty Pounds of lawful Money of *England*; and being so found in Arrear, the said *Ann* afterwards, to wit, on the same Day and Year at *Westminster* abovesaid, in Consideration thereof assumed upon herself, and to the said *Sylvanus* in his Life-time then and there faithfully promised that she the said *Ann* would well and faithfully pay and satisfy to the said *Sylvanus* the said forty Pounds, when she should be thereunto afterwards requested: Nevertheless the said *Ann* not regarding her said several Promises and Undertakings made in Manner abovesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *Sylvanus* in his Life-time, and the said *Thomas* and *Mary*, after the Death of the said *Sylvanus*, the said several Sums of Money, or any Part thereof, to the said *Sylvanus* in his Life-time, or to the said *Mary* after the Death of the said *Sylvanus* while she was Sole, or to the said *Thomas* and *Mary* after the Espousals between them celebrated, (to which said *Mary*, Administration of all and singular the Goods, Rights and Credits which were the said *Sylvanus*'s at the Time of his Death, by *George Barnardiston*, Master of Arts, Commissary and Official rightly and lawfully constituted in and through the Archdeaconry of *Huntingdon*, on the 4th Day of the Month of *April* in the Year of our Lord 1699, at *Westminster* abovesaid, after the Death of him the said *Sylvanus*, according to due Form of Law was committed) hath not paid, or in any Manner satisfied, (altho' to do this the said *Ann* by the said *Sylvanus* in his Life-time, to wit, the 4th Day of *April* in the Year of our Lord 1695 abovesaid, and by the said *Mary* after the Death of the said *Sylvanus* while she was Sole, to wit, on the 10th Day of *April* in the Year of our Lord 1699 abovesaid, and by the said *Thomas* and *Mary* after the Espousals between them celebrated, to wit, on the first Day of *January* in the Year of our Lord 1699 abovesaid, at *Westminster* abovesaid, was requested,) but the same to the said *Sylvanus* in his Life-time, or to the said *Mary* after the Death of the said *Sylvanus* while she was Sole, or to the said *Thomas* and *Mary*, after the
Espousals

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Espousals between them celebrated, to pay, or in any way satisfy hath wholly refused, and yet doth refuse, to the Damage of the said *Thomas* and *Mary* of fifty Pounds; and thereupon they bring Suit, &c. And the said *Thomas* and *Mary* bring here into Court the Letters of Administration of the said Official, which testify the Commission of Administration aforesaid in Form aforesaid.

Plea.
Did not promise within six Years.

And the said *Ann* by *John Smith* her Attorney comes and defends the Force and Injury when, &c. and saith, that the said *Thomas* and *Mary* ought not to have their said Action thereof against her, because she saith, that she did not assume upon herself at any time within six Years next before the Day of obtaining the original Writ of them the said *Thomas* and *Mary*, in Manner and Form as the said *Thomas* and *Mary* above complain against her; and this she is ready to verify; wherefore she prays Judgment if the said *Thomas* and *Mary* ought to have their said Action thereof against her, &c.

Replication.
That the Action accrued to Plaintiffs within six Years.

And the said *Thomas* and *Mary* say, that they by any Thing before by the said *Ann* in Pleading alledged ought not to be barred from having their said Action against the said *Ann*, because they say, that within six Years now last past, to wit, on the said 4th Day of *April* in the Year of our Lord 1699 aforesaid, the said Administration to her the said *Mary* was in due Manner committed in Form aforesaid, to wit, at *Westminster* aforesaid, by which the said Action accrued to them the said *Thomas* and *Mary* within six Years; and this they are ready to verify: Wherefore they pray Judgment and their Damages aforesaid by reason of the Premises, to be adjudged to them, &c.

Demurrer.

And the said *Ann* saith, that the Plea of them the said *Thomas* and *Mary* above pleaded in reply is not sufficient in Law for the said *Thomas* and *Mary* to have and maintain their said Action against the said *Ann*; to which said Plea in Manner and Form aforesaid pleaded the same *Ann* hath no Necessity, neither is she bound by the Law of the Land in any Manner to answer; and this she is ready to verify: Wherefore she prays Judgment, and that the said *Thomas* and *Mary* may be barred from having their said Action against the said *Ann*, &c.

Joinder in Demurrer.

And the said *Thomas* and *Mary* inasmuch as they have above in reply alledged sufficient Matter in Law to have and maintain their said Action against the said *Ann*, which they are ready to verify; which said Matter the said *Ann* doth not deny, nor hath in any Manner answered it, but wholly refuses to admit that Averment, they as before pray Judgment

Judgment and their Damages, by reason of the Premisses, to be adjudged to them, &c. And hereupon the Premisses being seen, and by the Justices here fully understood, it seemeth to the same Justices here that the said Plea of the said *Thomas* and *Mary* above pleaded in reply is sufficient in Law for them the said *Thomas* and *Mary* to have and maintain their said Action against the said *Ann*, as they the said *Thomas* and *Mary* have above alledged; Wherefore the said *Thomas* and *Mary* ought to recover their Damages by reason of the Premisses against the said *Ann*: But because it is unknown what Damages the said *Thomas* and *Mary* have sustained by reason of the Premisses, the Sheriff is commanded, that by the Oath of honest and lawful Men of his Bailiwick he diligently inquire what Damages the said *Thomas* and *Mary* have sustained, as well by reason of the Premisses, as for their Costs and Charges by them about their Suit in this Behalf laid out: And the Inquisition which, &c. that the Sheriff do make to appear here on the Morrow of the Holy Trinity, under the Seal, &c. and the Seals, &c. At which Day here come the said *Thomas* and *Mary* by their said Attorney, and the Sheriff, to wit, *Robert Beachcroft*, Knight, and *Henry Furnesse*, Knight, now return here a certain Inquisition taken before him at the *Hercules Pillars* in *Brook-street* in the County aforesaid, on the thirteenth Day of *June* last past, by the Oath of twelve, &c. by which it is found that the said *Thomas* and *Mary* have sustained Damages by reason of the Non-performance of the said first Promise, besides their Costs and Charges by them about their Suit in this Behalf laid out, to fifty-two Pounds and one Shilling, and also Damages by reason of the Non-performance of the Rest of the Promises aforesaid, besides their Costs and Charges as aforesaid laid out, to three Pence, and for those Costs and Charges to twenty Shillings: And hereupon the said *Thomas* and *Mary* freely here in Court do remit to the said *Ann* forty and one Shillings, Parcel of the said fifty-two Pounds and one Shilling, upon the said first Promise aforesaid by the said Inquisition, in Manner aforesaid above found, and the said three Pence, upon the Rest of the said Promises by the said Inquisition in Manner aforesaid likewise found: Therefore the said *Ann* is quit of the said forty and one Shillings and three Pence, &c. And the said *Thomas* and *Mary* pray Judgment of the Residue of the Damages and of the Costs and Charges aforesaid by the said Inquisition in Manner aforesaid likewise found, and an Increase thereof, to be adjudged to them, &c. Therefore it is considered that

Judgment for the Plaintiff.

Writ of Inquiry awarded.

Damages on the first Count.

Damages on the Rest of the Counts.

Remittitur of Part of Damages.

Final Judgment.

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the said *Thomas* and *Mary* do recover against the said *Ann* fifty Pounds, Parcel of the said fifty-two Pounds and one Shilling, upon the said first Promise by the Inquisition aforesaid above found, and the said twenty Shillings for their Costs and Charges by the same Inquisition in Manner aforesaid likewise found; and also twenty-six Pounds to the said *Thomas* and *Mary*, at their Request, for their Costs and Charges aforesaid by the Court here, by way of Increase adjudged; which said Damages in the whole amount to seventy and seven Pounds, and the said *Ann* in Mercy, &c.

Mercy.

Assignment of
Errors.

Afterwards, to wit, on *Saturday* next after the Octave of Saint *Martin* in this same Term (before which Day the said Lord *William* the Third, late King of *England* &c. died) before our Lady the Queen at *Westminster* cometh, the said *Ann Booth* by *John Buxton* her Attorney, and saith, that in the Record and Process aforesaid, and also in the giving the Judgment aforesaid, there is manifest Error in this, to wit, that where by the Record aforesaid it appears that the Judgment aforesaid in the Plea aforesaid given was given for the said *Thomas Johnson* and *Mary* his Wife against the said *Ann Booth*, where by the Law of the Land of this Kingdom of *England* Judgment in the same Plea ought to have been given for the said *Ann Booth* against the said *Thomas Johnson* and *Mary* his Wife, therefore in that there is manifest Error; and she prays that the Judgment aforesaid for that Error and others being in the Record and Process aforesaid may be reversed, annulled, and wholly holden for naught; and that the said *Ann* may be restored to all that she hath lost by occasion of the said Judgment; and that the said *Thomas* and *Mary* may rejoin to the Errors aforesaid, &c.

*In nullo est
erratum.*

And the said *Thomas* and *Mary* by *John Lilly* their Attorney come and immediately say, that neither in the Record and Process aforesaid, nor in the giving of the Judgment aforesaid, is there any Error; and pray that the Court of our said Lady the Queen now here may proceed to the Examination as well of the Record and Process aforesaid, as the Matters aforesaid by her the said *Ann Booth* above assigned for Error; and that the Judgment aforesaid in all Things may be affirmed: But because the Court &c.

Pleas

Pleas before the Lady the Queen at Westminster of the Term of Saint Michael in the first Year of the Reign of our Lady Ann Queen of England, &c. Roll 313.

Bennett against Purcell. Reported in Ld. Raym. 849.

Middlesex (to wit) **B**E it remembered, that on *Friday* Action on the
next after three Weeks of Saint *Michael* in this same Term before our Lady the Queen at *Westminster* came *Joseph Bennett*, Esq; by *Francis Hardy* Case by a
his Attorney, and brought into the Court of our said Lady Captain a-
the Queen now here his certain Bill against *Tobias Purcell*, gainst a Colo-
Esq; being in the Custody of the Marshal, &c. of a Plea nel of a Re-
of Trespass upon the Case; and there are Pledges of pro- giment for
secuting, to wit, *John Doe* and *Richard Roe*, which said Bill Pay.
follows in these Words, to wit, *Middlesex*, to wit, *Joseph Bennett*, Esq; complains of *Tobias Purcell*, Esq; in the Custody of the Marshal or the *Marshalsea* of our Lady the Queen, being before the Queen herself, of a Plea of Trespass upon the Case, for that, (to wit) that whereas he the said *Joseph* now is, and for divers Years heretofore, to wit, in the Time of *William* the Third, late King of *England*, &c. hath been a Captain, lawfully constituted and appointed by the said late King and our Lady the now Queen, to a certain Company of their soldiers in the Service of this Kingdom, as well to order and govern, as to consult and appoint in Military Affairs, and other warlike Necessaries arising and happening in Battle and War; and by reason thereof hath had and been accustomed, and ought to have for himself, and on the Behalf of such Soldiers substituted and placed under him, certain several Sums of Money, as Wages, Salaries and Rewards for their respective Services, usually paid to them by the Day, or by the Month, or to other Military Officers, to himself the said *Joseph*, and other such Captains appointed to such Uses and Purposes as aforesaid, paid by our said Lady the now Queen and the said late King, or by such Persons as by them have been and are appointed, deputed and authorized to act and pay such Wages, Salaries and Rewards. And also whereas the said *Tobias* on the tenth Day of *March* in the first Year of the Reign of our Lady the now Queen, was indebted to the said *Joseph* in seventy Pounds of lawful Money of *England*, for Money of him the said *Joseph* to himself as is aforesaid by reason of his said Offices due and payable by him the said *Tobias* before that Time (he being then an Of-
ficer

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ficer commanding the said *Josepb*, to wit, the Colonel of the Regiment in which he served under him as Captain) received and had from the public Office appointed by the said late King to make such payments; and being so indebted, the said *Tobias* the same Day and Year at the Parish of Saint *Martin in the Fields* in the County aforesaid, in Consideration thereof assumed upon himself, and to the said *Josepb* then and there faithfully promised that he the said *Tobias* the same Sum of Money (as aforesaid by him received) well and faithfully would pay and satisfy. And also whereas the said *Tobias* on the Day and Year aforesaid was indebted to the said *Josepb* in the other seventy Pounds of lawful Money of *England*, for Money by him the said *Tobias* to the Use of him the said *Josepb* before that Time had and received; and being thereof so indebted the said *Tobias* the same Day and Year at the Parish aforesaid in the County aforesaid, in Consideration thereof assumed upon himself, and to the said *Josepb* then and there faithfully promised that he the said *Tobias* would well and faithfully pay and satisfy the same Sum of Money last mentioned, when he should be thereunto required. And also whereas the said *Tobias* the Day and Year aforesaid was indebted to the said *Josepb* in other seventy Pounds, for Money by him the said *Josepb* to the Use and at the special Instance and Request of him the said *Tobias* before that Time paid, expended, disbursed and laid out; and being thereof so indebted, the said *Tobias* the said Day and Year, at the Parish aforesaid in the County aforesaid, in Consideration thereof assumed upon himself, and to the said *Josepb* then and there faithfully promised that he the said *Tobias* would well and faithfully pay and satisfy the said Sum of seventy Pounds last mentioned to the said *Josepb*, when he should be thereunto requested. And also whereas the said *Tobias* the same Day and Year was indebted to the said *Josepb* in other seventy Pounds of lawful Money of *England*, for the like Sum of Money which for and on the Behalf of the said *Tobias*, and at his Instance and Request the said *Josepb* before that Time had paid to the said late King, to whom the said *Tobias* then did stand justly indebted, and ought to have paid it; and being thereof so indebted, the said *Tobias* the Day and Year aforesaid, at the Parish aforesaid in the County aforesaid in Consideration thereof assumed upon himself, and to the same *Josepb* then and there faithfully promised, that he the said *Tobias* would well and faithfully pay and satisfy the said seventy Pounds last mentioned to the said *Josepb*, when he should be thereunto required: Nevertheless the said *Tobias* not at all regarding his

his said several Promises and Undertakings, but contriving and fraudulently intending craftily and subtilly to deceive and defraud him the said *Joseph* in this Behalf, the said several Sums of Money, or any Part thereof, (although often required) to the said *Joseph* hath not paid, or in any Manner satisfied, but to pay the same to him hath hitherto wholly refused, and yet doth refuse, to the Damage of him the said *Joseph* of one hundred Pounds ; and thereupon he brings Suit, &c.

And the said *Tobias Purcell*, against whom the said Bill is exhibited by the Name of *Tobias Purcell*, Esquire, by *Henry Wright* his Attorney, comes and defends the Force and Injury ; and saith, that he ought not to be compelled to answer to the said Bill, because he saith, that he at the Time of exhibiting the said Bill was a Gentleman, and not an Esquire, as by the said Bill is above supposed, to wit, at the Parish aforesaid in the County aforesaid ; and this he is ready to verify : Wherefore as he is named Esquire in the said Bill, he prays Judgment of the said Bill, and that the Bill may be quashed, &c.

And the said *Joseph Bennett* saith, that by any Thing by the said *Tobias* above in Pleading alledged, the said Bill of him the said *Joseph* ought not to be quashed, because protesting that the Plea aforesaid above pleaded in Abatement of the said Bill of him the said *Joseph*, and the Matter in the same contained in Manner and Form aforesaid pleaded, are not sufficient in Law for this Cause, (among others) that is to say, for that the Action or Cause of him the said *Joseph* is an Action or Cause prosecuted by a Bill, and without the original Writ of our Lady the now Queen, in which no Outlawry lieth or can lie upon such Bill ; neither is it provided by the Statute of Additions lately set forth, that any Additions shall be in such Actions so prosecuted ; and so it is immaterial in this Action whether the said *Tobias* be a Gentleman or an Esquire : Nevertheless for Plea the said *Joseph* saith and asserts, that long before, and at the Time of exhibiting of his Bill aforesaid, the said *Tobias* was esteemed and reputed as well an Esquire as a Gentleman, but more especially an Esquire, by reason and in respect not only of his Parentage, but also of his most worthy Employment : And this he prays that it may be inquired of by the Country.

And the said *Tobias* saith, that the said Plea by the said *Joseph* in Manner and Form aforesaid above pleaded in reply, and the Matter in the same contained, are not sufficient in Law to compel him the said *Tobias* to answer to the

Defendant was a Gentleman, and not an Esquire, in Abatement.

Replication, protesting that the Matter in the Plea is insufficient, and that in an Action by Bill, an Addition is immaterial.

Yet for Replication says Defendant is an Esquire, and goes to the Country.

Demurrer.

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Joinder in
Demurrer.

said Bill of him the said *Joseph*, to which the said *Tobias* hath no Necessity, neither is he bound by the Law of the Land in any Manner to answer; and this he is ready to verify: Wherefore for want of a sufficient Replication in this Behalf, the said *Tobias*, as before, prays Judgment of the Bill aforesaid, and that the Bill may be quashed, &c.

And the said *Joseph Bennett* saith that the said Plea by him the said *Joseph* in Manner and Form aforesaid above pleaded in reply, and the Matter in the same contained, are good and sufficient in Law to compel him the said *Tobias* to answer to the said Bill of him the said *Joseph*; which said plea, and the Matter in the same contained, the said *Joseph* is ready to verify and prove, as the Court, &c. And because the said *Tobias* doth not answer to that Plea, nor in any Manner denies it, he the said *Joseph* prays Judgment, and that the said *Tobias* may answer over to the said Bill of the said *Joseph*: But because the Court of our said Lady the now Queen here are not yet advised of their Judgment to be given of and concerning the Premises, Day thereupon is given to the Parties aforesaid, before our Lady the Queen at *Westminster*, until *Saturday* next after the Octave of *St. Martin*, to hear their Judgment of and concerning the Premises, for that the Court of our said Lady the Queen now here is not yet, &c.

Judgment that the Defendant answer over.

Pleas before the Lord the King at Westminster of the Term of Saint Hilary in the twelfth Year of the Reign of the Lord William the Third, by the Grace of God, now King of England, &c.

Among the Pleas of the Crown. Roll 38.

The King against Watson. Reported in 2 Ld. Raym. 856.

Indictment
for not repair-
ing a House
adjoining to a
Bridge in
Lynn, which
Defendant
was obliged
to repair by
reason of his
Tenure there-
of.

The Borough of *King's Lynn* in **B**E it remembered, the County of *Norfolk*, (to wit that heretofore, that is to say on *Thursday* the 11th Day of *January* in the 11th Year of the Reign of our Sovereign Lord *William* the Third, by the Grace of God of *England, Scotland, France* and *Ireland* King, Defender of the Faith, &c. at the General Sessions of the Peace and Gaol-Delivery of the Lord the King, held for the Borough aforesaid, and the Liberty of the same Borough, at the *Guibald* of the said Borough, before *Robert Awborne*, Esq; Mayor, *Daniel Bedingfield*, Esq; Recorder, *Benjamin Keene*, *Robert Sparrow* and others their fellows, Justices of the said Lord the King, assigned to keep

keep his Peace within the Borough aforesaid, and the Liberty of the same Borough, and to deliver the Gaol within the said Borough of the Prisoners being in the same, and also to hear and determine divers Felonies, Trespasses and Misdemeanors committed in the said Borough, and the Liberty of the same Borough, by the Oath of twelve Jurors, of honest and lawful Men of the Borough aforesaid, then and there impanelled and sworn to inquire for the said Lord the King and the Body of the Borough aforesaid, it was presented at large, that *James Watson*, late of *King's Lynn* in the County of *Norfolk*, Victualler, on the first Day of *January* in the 11th Year of the Reign of our Sovereign Lord *William* the Third, now King of *England*, &c. and continually from that Time until the Day of the Taking of the said Inquisition hath been possessed, and yet is possessed of a certain Messuage or Dwelling-house, with the Appurtenances, situate and being in *King's Lynn* aforesaid, within the Borough aforesaid and Liberty thereof, and within the Jurisdiction of this Court, adjoining to a certain Bridge called *Stonebridge*, and upon a certain common Fleet or Sewer called *Purfleet-draine*, formerly built, (the same Bridge being the King's common Highway there;) and that by reason of his Tenure thereof, he the said *James* hath been obliged, and ought well and sufficiently to repair and maintain the Foundation of the said Messuage or Dwelling-house upon the Fleet or Sewer aforesaid: Nevertheless the said *James* for all the Time aforesaid hath suffered, and yet suffers the Foundation of the said Messuage or Dwelling-house to lie and continue in great Decay and Ruin for want of due Reparation thereof, by which the said Messuage or Dwelling-house hath been and yet is very like to fall down into the said common Fleet and Sewer, and in and upon the said Bridge, to the great Danger of killing the liege Men and Subjects of the said Lord the King passing, residing and working on, by, over and under the said Bridge, and to the no small Fear and Grievance of them the said liege Men and Subjects of the said Lord the King, to the evil Example of others in such Case delinquent, and against the Peace of the said Lord the now King, his Crown and Dignity; which said Indictment the Lord the now King afterwards for certain Causes caused to come to be determined before himself, &c. Wherefore the Sheriff was The Indict-commanded, that he should not omit, &c. but that he ment removed should cause the said *James Watson* to come to answer, &c. to *B. R.*

And now, to wit, on *Thursday* next after the Octave of St.

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Plea, Not
guilty.

Venire awarded.

The Sheriff
non misit
Breve.

Return of the
Venire.

Distingas awarded.

Nisi prius at
Norwich.

Hilary in this same Term before the Lord the King at *Westminster* cometh the said *James Watson* by *Richard Foulkes* his Attorney, and having heard the Indictment afore said, saith, that he is not guilty thereof; and of this he puts himself upon the Country; and *Samuel Astry*, Knight, Coroner and Attorney of the Lord the King in the Court of the said Lord the King before the King himself, who prosecutes for the said Lord the King in this Behalf likewise, &c. Therefore let a Jury thereupon come before the said Lord the King from *Easter* Day in fifteen Days, where so ever, &c. by whom, &c. and who, &c. to recognize, &c. because as well, &c. The same Day is given as well to the said *Samuel Astry*, Knight, who prosecutes, &c. as to the said *James Watson*, &c. At which said fifteen Days of *Easter*, before the said Lord the King at *Westminster*, come as well the said *Samuel Astry*, Knight who prosecutes, &c. as the said *James Watson* by his Attorney afore said: And the Sheriff hath not sent the Writ thereof: Therefore, as before, let a Jury come thereupon before the said Lord the King on the Morrow of the Holy Trinity, where so ever, &c. by whom &c. and who, &c. to recognize, &c. because as well, &c. The same Day is given as well to the said *Samuel Astry*, Knight, who prosecutes, &c. as to the said *James Watson*, &c. On which said Morrow of the Holy Trinity before the said Lord the King at *Westminster* come as well the said *Samuel Astry*, Knight, who prosecutes, &c. as the said *James Watson* by his Attorney afore said: And the Sheriff hath returned the Names of twelve Jurors, of whom none, &c. Therefore the Sheriff of the County afore said is commanded, that he do not omit, &c. but that he distrain them by all their Lands, &c. And that of the Issues, &c. so that he may have their Bodies before the said Lord the King from the Day of Saint *Michael* in three Weeks, where so ever, &c. or before the Justices of the said Lord the King, assigned to take the Assises in the County of *Norfolk* afore said, if they shall before come on *Thursday* the 14th Day of *August*, at the Castle of *Norwich* in the County afore said, by Form of the Statute, &c. for want of Jurors, &c. Therefore let the Sheriff have the Bodies, &c. to recognize in Form afore said. The same Day is given as well to the said *Samuel Astry*, Knight, who prosecutes, &c. as to the said *James Watson* &c. At which said three Weeks of St. *Michael*, before the said Lord the King at *Westminster*, come as well the said *Samuel Astry*, Knight, who prosecutes, &c. as the said *James Watson* by his Attorney afore said. And the

the Justices aforesaid, before whom, &c. have sent here their Record before them had in these Words: Afterwards *Postea.* on the day and at the Place within contained, before *Thomas Trevor*, Knight, Chief Justice of the Lord the King of the Bench, and *Robert Tracy*, Esq; one of the Barons of the Exchequer of the said Lord the King, Justices of him the said Lord the King, assigned to take the Assises in the County of *Norfolk*, by Form of the Statute, &c. came as well the within named *Samuel Astry*, Knight, Coroner and Attorney of the said Lord the King in the Court of him the said Lord the King before the King himself, who prosecutes, &c. in his proper Person, as the within written *James Watson* by his Attorney within contained, and the Jurors of the Jury, whereof Mention is within made, being called, certain of them, to wit, *Thomas Woodrowe*, *Samuel Jellians*, *Henry Utting*, *John Kingwood*, *Thomas Ward*, *Thomas Backe*, *John Butler*, *Thomas Pycroft*, *John Haylett*, *Thomas Norris* and *Francis Fisher* came, and are sworn upon the Jury aforesaid: And because the Rest of the Jurors of the same Jury did not appear, therefore another of the By-standers, *Tales.* being chosen for this Purpose by the Sheriff of the County aforesaid, at the Request of *Edward Northey*, Esq; Attorney General of the said Lord the King, and by the Command of the said Justices newly appointed, whose Name is affixed in the Panel within written, according to the Form of the Statute in such Case lately made and provided; which said Juror so newly appointed, to wit, *William Sheene* being called likewise came: And hereupon public Proclamation was made here in Court for the said Lord the King, (as the Custom is) That if there was any one who would inform the Justices aforesaid, the said Lord the King's Serjeant at Law, the said King's Attorney General, or the Jury within written, of the Premises within contained, he might come forth and be heard: And *Charles Whitaker*, Esq; one of the Serjeants at Law of the said Lord the King, offered himself to do this; whereupon it was proceeded to take the Jury aforesaid, by the said Jurors now appearing thereupon, who were chosen, tried and sworn to speak the Truth concerning the Matter within contained. And afterwards one of the Jurors aforesaid, to wit, *Francis The Trial put Fisher of Blo Norton*, with the Consent as well of the said off by a Juror *Samuel Astry*, Knight, who prosecutes, &c. as of the said being with- *James Watson*, was absolutely withdrawn by the Court drawn. from the Panel within written, and the Rest of the Jurors, with the Consent as well of the said *Samuel Astry*, Knight, who prosecutes, &c. as of the said *James Watson*, are discharged

PLEADINGS TO THE CASES.

Decem Tales
awarded.

The Sheriff
non misit
Breve.

Nisi prius at
Thetford.

A second *De-*
cem Tales.

The Death of
the King.

charged by the Justices aforesaid from saying any Thing now of their Verdict of and upon the Premises: Therefore the Sheriff of the County aforesaid is commanded, that (the said *Francis Fisber* being removed) he do not omit, &c. but that he distrain the Jurors before impanelled by all their Lands, &c. and that of the Issues, &c. so that he may have their Bodies before the said Lord the King on the Octave of Saint *Hilary*, wheresoever, &c. to recognize in Form aforesaid. The Sheriff of the County aforesaid is also commanded, that he do not omit, &c. but that he put ten such, &c. and who, &c. and that he have them before the said Lord the King at the aforesaid Term, to recognize, &c. in Form aforesaid, so that, &c. The same Day is given as well to the said *Samuel Astry*, Knight, who prosecutes, &c. as to the said *James Watson*, &c. At which said Octave of Saint *Hilary* before the said Lord the King at *Westminster* come as well the said *Samuel Astry*, Knight, who prosecutes, &c. as the said *James Watson* by his Attorney aforesaid; and the Sheriff hath not thereupon sent the Writ: Therefore, as before, the Sheriff of the County aforesaid is commanded, that (the said *Francis Fisber* being removed) he do not omit, &c. but that he distrain the Jurors before impanelled by all their Lands, &c. and that of the Issues, &c. so that he may have their Bodies before the said Lord the King from *Easter* Day in fifteen Days, wheresoever, &c. or before the Justices of the said Lord the King, assigned to take the Assises in the County of *Norfolk* aforesaid, if they shall before come on *Thursday* the 19th Day of *March* at *Thetford* in the County aforesaid, by Form of the Statute, &c. for want of Jurors: Therefore let the Sheriff have the Bodies, &c. to recognize in Form aforesaid: The Sheriff of the County aforesaid is also commanded, that he do not omit, &c. but that he put ten such, &c. by whom, &c. and who &c. And that he have them before the said Lord the King at the said fifteen Day's of *Easter*, wheresoever, &c. or before the said Justices of the said Lord the King, assigned to take the Assises in the County aforesaid, if they shall before come, on the said *Thursday* the 19th Day of *March* at *Thetford* aforesaid in the County aforesaid, by Form of the Statute, &c. for want of Jurors, &c. Therefore let the Sheriff have the Bodies, &c. to recognize in Form aforesaid, &c. so that, &c. The same Day is given as well to the said *Samuel Astry*, Knight, who prosecutes, &c. as to the said *James Watson*, &c. At which said fifteen Days of *Easter*, before which Day our late Sovereign Lord *William* the Third,

Third, King of *England*, &c. died, and the Rule and Government of this Realm of *England*, descended to the most Serene Lady *Anne*, now Queen of *England*, &c. which said Lady *Anne*, hath taken upon herself the Rule and Government thereof: And at the same fifteen Days of *Easter* the Writ of Ad-
 Process afore said was adjourned by the Writ of the said jourment. Lady *Anne*, now Queen of *England*, &c. of common Ad-
 journment before the said Lady the Queen, until from *Easter* Day in three Weeks, wheresoever, &c. At which said three Weeks of *Easter*, before the said Lady the Queen at *Westminster*, come as well the said *Samuel Asty*, Knight, who prosecutes, &c. as the said *James Watson* by his Attorney afore said And the Sheriff of the County of *Norfolk* afore said hath not thereupon sent the Writ nor the Justices the Record, therefore, as before, the Sheriff of the County afore said is commanded that (the said *Francis Fisber* being removed) he do not omit, &c. But that he distrain the Jury before impanelled by all their Lands &c. and that of the Issues, &c. so that he may have their Bodies before the said Lady the now Queen on the Morrow of the Holy Trinity, wheresoever, &c. to recognize in Form afore said. The Sheriff of the County afore said is also commanded, that he do not omit, &c. but that he put ten such, &c. and who, &c. and that he have them before the said Lady the Queen at the said Term to recognize in Form afore said, so that &c. The same Day is given as well to the said *Samuel Asty*, Knight who prosecutes, &c. as to the said *James Watson*, &c. At which said Morrow of the Holy Trinity, before the said Lady the now Queen at *Westminster*, come as well the said *Samuel Asty*, Knight, who prosecutes, &c. as the said *James Watson* by his Attorney afore said; and the Sheriff hath not thereupon sent the Writ, nor the Justices the Record, therefore, as before, the Sheriff of the County afore said is commanded, that (the said *Francis Fisber* being removed) he do not omit, &c. but that he distrain the Jury before impanelled by all their Lands, &c. and that of the Issues, &c. so that he may have their Bodies before the said Lady the Queen from the Day of *St. Michael* in three Weeks, wheresoever, &c. or before the Justices of the said Lady the now Queen, assigned to take the Assises in the County of *Norfolk* afore said, if they shall before come, on *Tuesday* the fourth Day of *August*, at *Norwich*. the castle of *Norwich* in the County afore said, by Form of the Statute, &c. for want of Jurors, &c. Therefore let the Sheriff have the Bodies, &c. to recognize in Form
 afore said.

A third Decem Tales.

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aforesaid. The Sheriff of the said County is also com-
 manded, that he do not omit, &c. but that he put ten, such
 &c. by whom, &c. and who, &c. And that he have them
 before the said Lady the Queen, at the said three Weeks
 of *St. Michael*, wheresoever, &c. or before the said Jus-
 tices of the said Lady the now Queen, assigned to take the
 Assises in the County aforesaid, if they shall before come,
 on the said *Tuesday* the fourth Day of *August*, at the said
 Castle of *Norwich* in the County aforesaid, by Form of the
 Statute, &c. for want of Jurors, &c. Therefore let the
 Sheriff have the Bodies, &c. to recognize in Form afore-
 said, so that, &c. The same Day is given as well to the
 said *Samuel Asty*, Knight, who prosecutes, &c. as to the
 said *James Watson*, &c. At which said three Weeks of *St.*
Michael, before the said Lady the Queen at *Westminster*,
 come as well the said *Samuel Asty*, Knight, who prose-
 cuts, &c. as the said *James Watson* by his Attorney afore-
 said. And the said Justices, before whom, &c. have sent
 here their Record before them had in these Words: Af-
 terwards on the Day and at the Place within contained,
 before *Edward Nevill*, Knight, one of the said Lady the
 Queen her Justices of the Bench, and *Robert Price*, Esq;
 one of the Barons of the Exchequer of the said Lady the
 Queen, Justices of the said Lady the Queen, assigned to
 take the Assises in the County of *Norfolk*, by Form of the
 Statute, &c. came as well the within named *Samuel Asty*,
 Knight, Coroner and Attorney of the said Lady the Queen
 in the Court of the said Lady the Queen before the Queen
 herself, who prosecutes, &c. in his proper Person, as the
 within written *James Watson* by his Attorney within con-
 tained: And hereupon public Proclamation was made here
 in Court for the said Lady the Queen, as the Custom is,
 that if there was any one who would inform the Justices
 aforesaid, the said Queen's Serjeant at Law, the said Queen's
 Attorney General, or the Jury within written, concerning
 the Premises, he might come forth and be heard; and
Charles Whitaker, Esq; Serjeant at Law, offered himself to
 do this; whereupon it was proceeded to take the Jury a-
 foresaid; and the Jurors of the Jury, whereof Mention is
 within made, being called, certain of them, to wit *John*
Elgar, *Samuel Scarfe*, *Thomas Woodrowe*, *Samuel Jellians*,
John Lingwood, *John Butler*, *John Haylett*, *Thomas Mor-*
ris, *John Gamble* and *Charles Bullock* came and are sworn
 upon that Jury: And because the Rest of the Jurors of the
 said Jury did not appear, therefore others of the By-stand-
 ers, by the Sheriff of the County aforesaid to this being
 chosen,

Fourth Decem
Tales.

Postea.

Tales.

chosen, at the Request of the said *Samuel Aftry*, and by the Command of the Justices aforesaid are newly appointed, whose Names are affixed in the Panel within written, according to the Form of the Statute in such Case lately made and provided; which said Jurors so newly appointed, to wit, *William Sheen* and *Edward Roberts* being called likewise came, who being chosen, tried and sworn to speak the Truth concerning the Matter within contained, together with the other Jurors aforesaid, before impanelled and sworn say upon their Oath, that the within Special Ver-named *James Watson*, at the Time of the Indictment dict. within specified against him for the Matters within contained, and for ten Years before, was possessed of the Messuage or Dwelling-house within specified; and that one *Sarab Davy*, Widow, who at the same Time dwelt at *Exeter* out of the Jurisdiction of the Court of the Borough of *King's Lynn* within written at the Time of the Indictment aforesaid, and also for the whole Time aforesaid, was seised of and in the Messuage or Dwelling-house aforesaid; and being so seised thereof, demised the said Messuage or Dwelling-house with the Appurtenances, to the said *James*, to hold to the said *James* at the Will only of them the said *Sarab* and *James*; but whether the said *James* be chargeable to repair the Messuage or Dwelling-house aforesaid, and the Foundation thereof, by reason of his Tenure, the Jurors aforesaid are wholly ignorant, and pray the Advise-ment of the Court in the Premises: And if upon the whole Matter aforesaid, by the jurors aforesaid in Form aforesaid found, it shall seem to the Court here, that the said *James*, by reason of his Tenure, be chargeable to repair the said Messuage or Dwelling-house, and the Foundation thereof, then they the said Jurors say upon their Oath aforesaid, that the said *James Watson* is guilty of the Premises in the Indictment within written within specified, in Manner and Form as by that indictment for the said Lady the Queen is within alledged: But if upon the whole Matter aforesaid, by the Jurors aforesaid in Form aforesaid found, it shall seem to the Court here that the said *James*, by reason of his Tenure, is not chargeable to repair the Messuage or Dwelling-house aforesaid, nor the Foundation thereof, then the same Jurors say upon their Oath aforesaid, that the said *James Watson* is not guilty of the Premises in the same Indictment within specified, in Manner and Form as the same *James* within in pleading for himself hath alledged, &c.

Judgment against the Defendant.

The

The Queen against Burneby. 2 Ld. Raym. 900.

A Conviction by Justices of the Peace for cutting down Trees, grounded on the Statute of the 43d Year of Eliz. cap. 7.

County of *Huntingdon*, ff. **W**HEREAS Complaint hath been made unto us, whose Names are hereunto subscribed, Justices of the Peace for the said County of *Huntingdon*, on the Day of the Date hereof, by Sir *Robert Bernard*, Bart. against *Robert Burneby* of *Brampton* in the said County of *Huntingdon*, Gentleman, and *John Sandy* of the same Town Labourer, for the unlawful cutting down and spoiling of divers Lime-trees of the said Sir *Robert Bernard* in the Night-time of the 23d Day of *August* last past, (the said Lime-Trees being then growing on the Ground of the said Sir *Robert Bernard* in *Brampton* aforesaid): And whereas it appears unto us the said Justices of the Peace, by the Testimony of *Mary Prior* of *Brampton* aforesaid, Widow, being duly sworn and examined by us, according to the Statute made in the three and fortieth Year of the Reign of the late Queen *Elizabeth*, intituled, An Act to avoid and prevent divers Misdemeanors in lewd and idle Persons. That the said *Robert Burneby* and *John Sandy* did cut down and spoil the said Lime-trees in the Night-time of the Day aforesaid; and having heard the said *Robert Burneby* and *John Sandy* (being this Day brought before us to answer the said Offence) and also having heard and examined divers Witnesses upon Oath, produced by the said *Robert Burneby* and *John Sandy* in their Defence, we the said Justices of the Peace, upon hearing what could be alledged and proved on either Side, have adjudged and convicted, and do hereby adjudge and convict the said *Robert Burneby* and *John Sandy* to be guilty of the Offence aforesaid, for cutting down and spoiling the said Lime-Trees, and according to the Power and Authority given by the said Act, we the said Justices have ordered and appointed, and do hereby order and appoint that the said *Robert Burneby* and *John Sandy* do on or upon the 22d Day of this Instant Month of *October* give and pay unto the said Sir *Robert Bernard* 20 l. of lawful *English* Money, for Recompence and full Satisfaction for his Damages by him sustained by reason of the cutting down and spoiling of the said Lime-Trees; and in Default of Payment thereof, to be further proceeded against according to the Direction of the said Statute.

Given

PLEADINGS TO THE CASES.

27

Given under our Hands and Seals the 7th Day of *October* in the 13th Year of the Reign of our Sovereign Lord *William* the Third, by the Grace of God, of *England, Scotland, France and Ireland* King, Defender of the Faith, &c. Annoq; Domini 1701.

Signed and sealed by *John Pocklington, Esq, John Bagg, Esq; William Naylor, Esq; John Knighton, Doctor in Divinity, Robert Blemell, Clerk, and James Torkington, Esq;* six of his Majesty's Justices of the Peace for the County of *Huntingdon*.

The King against Nash. 2 Ld. Raym. 989.

The Record of a Conviction for aiding and assisting in Deer-stealing.

Suffex, (to wit) **B**E it remembered, that on the 20th Day of *August* in the 13th Year of the Reign of our Sovereign Lord *William* the Third, now King of *England, &c.* at the Parish of *Boxgrove* in the County of *Suffex* aforesaid, *William Mant* of the said Parish of *Boxgrove*, Husbandman, in his proper Person came before us *John Miller, Esq; and William Westbrook, Esq;* Justices of the said Lord the now King, assigned to keep the Peace in the County of *Suffex* aforesaid, and also to hear and determine divers Felonies, Trespasses, and other Misdemeanors committed in the same County, and gave Information to us the aforesaid Justices, that *Edward Rolfe* of *South Barstead* in the County aforesaid, Husbandman, and another Person to the said *William Mant* unknown, in the Month of *April*, to wit, on the 11th Day of the said Month in the abovesaid 13th Year of the Reign of the said Lord the now King, in the Night of the same Day and within the Space of twelve Months next before the said Information made before us, five Fallow Deer in the Park of the then *William Morley*, Knight of the Bath, now deceased, called *Halnaker Park*, (the same Park lying and being in the said Parish of *Boxgrove*, and being a Park and Soil where Fallow Deer now are, and on the said 11th Day of *April* in the 13th Year abovesaid, and for the Space of forty Years and more have been usually kept) with Force and Arms, &c. with certain Dogs unlawfully and unjustly chased; and killed five Fallow Deer of the said *William Morley* in the said Park then being, and one of those Deer so killed, carried away, without the Consent of the said *William Morley*, (then being the Proprietor of the said

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said Park, and of the said several Deer here mentioned to be killed,) or of any other Person specially intrusted with the Keeping of the said Park, and the Deer in the same Park, or of any of them, at the Time of the Killing of those Deer, or at any Time hitherto, to wit, at the Parish of *Boxgrove* aforesaid in the County aforesaid; and that *Thomas Nash* of the Parish of *Walberton* in the County aforesaid, Gentleman, in the said Month of *April* in the abovesaid 11th Year of the Reign of the said Lord the now King, to wit, on the 11th Day of the same Month at the Parish of *Boxgrove* aforesaid, with Force and Arms, &c. was unlawfully and unjustly aiding and assisting the said *Edward Rolfe*, and the said other Person, to the said *William Mant* unknown, in the unlawful and unjust chasing and killing of the said five Fallow Deer, that is to say, in persuading and inticing the said *Edward Rolfe*, and the other Person unknown, to chase and kill the same Deer in the said Park at the said Parish of *Boxgrove*, and by then and there lending certain Dogs of him the said *Thomas Nash* to the said *Edward Rolfe* and the other Person, for the chasing and killing of those Deer, being the same Dogs which killed those Deer, and in then and there lending the Horse of him the said *Thomas Nash* to the said *Edward Rolfe* and the other Person to carry away the Deer which they then and there killed with those Dogs, contrary to the Form of the Statute in such Case lately made and provided. And afterwards, to wit, on the 28th Day of the said Month of *August* in the abovesaid 13th Year of the Reign of the said Lord the now King at *Arundell* in the County of *Sussex* aforesaid, one *Robert Haynes* of *Walberton* in the County of *Sussex* aforesaid, Husbandman, being a credible Witness, in his proper Person comes before us the said Justices, and now makes his corporal Oath upon the Holy Evangelists of God to speak the Truth of and concerning the Premises in the Information aforesaid specified, before us the said Justices, (having sufficient Power and Authority to administer the said Oath to the said *Robert Haynes* in this Behalf;) and the said *Robert Haynes* being sworn as aforesaid upon his Oath aforesaid now saith, deposeth and sweareth, that *Edward Rolfe* of *Southerstead* in the County aforesaid, Husbandman, in the Information aforesaid named, and he the said *Robert Haynes* in the Month of *April*, to wit, on the 11th Day of the same Month in the abovesaid 13th Year of the Reign of the said Lord the now King, with Force and Arms, &c. with certain Dogs entered into the Park of the then *William Morley*, Knight of the Bath, in the Information aforesaid mentioned called *Halnaker Park*,
situate

situate, lying and being in the Parish of *Boxgrove* in the County of *Sussex* aforesaid, (being a Park and Soit where Fallow Deer then, and for the Space of forty Years then next before past, were usually kept) and five Fallow Deer of the said *William Morley* in the same Park then being, then and there with those Dogs chased and killed, and carried away one Deer of the said five Deer so killed as aforesaid: And the same *Robert Haynes* upon his said Oath further saith, deposeth and sweareth, that *Thomas Nasb* of the Parish of *Walberton* in the County of *Sussex* aforesaid, Gentleman, in the Information aforesaid named, in the said Month of *April*, to wit, on the 11th Day of the same Month in the abovesaid 13th Year of the Reign of the said Lord the now King, incited them the said *Edward Rolfe* and *Robert Haynes* to chase and kill the said five Fallow Deer in the Park aforesaid, at the Parish of *Boxgrove* aforesaid, and then and there did lend three Greyhounds of him the said *Thomas Nasb* to them the said *Edward Rolfe* and *Robert Haynes*, for the chasing and killing of the said Fallow Deer of the said *William Morley*, in his said Park, at the said Parish of *Boxgrove* in the County aforesaid, and afterwards received from them the said *Edward Rolfe* and *Robert Haynes* and disposed of to his own Use, one Deer of the said five Deer so killed with the Dogs of him the said *Thomas Nasb*, as aforesaid, in the said Park of the said then *William Morley*, in the Information aforesaid specified: Whereupon the said *Thomas Nasb*, after a Summons to him thereupon first in that Behalf now duly made, on the same 28th Day of *August* in the abovesaid 13th Year of the Reign of the said Lord the now King, at *Arundell* aforesaid in the County, aforesaid, by reason of the information aforesaid appeared in his proper Person before us the said *John Miller* and *William Westbrook*, then Justices of the said Lord the King, assigned to keep the Peace in the County of *Sussex* aforesaid, and also to hear and determine divers Felonies, Trespasses, and other Misdemeanors committed in the same County. And the said Information and the Evidence thereupon being heard and fully understood by him the said *Thomas Nasb* he the said *Thomas Nasb* is asked by us the said Justices, if he hath or knoweth any Thing to say for himself, why he the said *Thomas Nasb* should not be convicted of the Premises aforesaid above laid to his Charge in Form aforesaid: And because (we having heard and fully understood all and every Thing alledged by him the said *Thomas Nasb* in his Defence of and concerning the Premises) it manifestly appears

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pears to us the said Justices that the said *Thomas Nash* is guilty of the Premises aforesaid, in the said Information laid to his Charge, in Manner and Form as in the said Information above in that Behalf is alledged; Therefore it is considered by us the said Justices, that the said *Thomas Nash*, by Testimony of the said *Robert Haynes*, a credible Witness, upon his said Oath before us the said Justices made as aforesaid is convicted of the Premises above laid to his Charge, as set forth by the said Information according to the Form of the Statute in such Case made and provided. In Witness whereof we the said *John Miller* and *William Westbrook*, the Justices aforesaid, have set our Hands and Seals to this Record, at *Arundell* aforesaid, the said 28th Day of *August* in the abovesaid 13th Year of the Reign of the Lord the King that now is.

John Miller.

William Westbrook.

Pleas before our Sovereign Lady the Queen at Westminster of the Term of St. Michael in the second Year of the Reign of Lady Ann Queen of England, &c. Roll. 364.

Nutt against Mills. 2 Ld. Raym. 1014.

London, (to wit) **B**E it remembered, that on *Saturday* next after three Weeks of Saint *Michael* in this same Term, before our Lady the Queen at *Westminster* came *John Nutt* by *George Allgood* his Attorney, and brought here into the Court of the said Lady the Queen then there his certain Bill against *Henry Mills*, one of the Clerks of *Rowland Holt* Esq; and *Robert Coleman* Gentleman, Chief Clerks of the Lady the Queen assigned to inroll Pleas in the Court of her the said Lady the Queen before the Queen herself, present here in Court in his proper Person, otherwise called *Henry Mills* of the *Inner Temple, London*, Gentleman, of a Plea of Debt; and there are Pledges of prescuting to wit, *John Doe* and *Richard Roe*; which said Bill follows in these Words, to wit, *London, (to wit)* *John Nutt* complains of *Henry Mills*, one of the Clerks of *Rowland Holt*, Esq; and *Robert Coleman*, Gentleman, Chief Clerks of the Lady the Queen, assigned to inroll Pleas in the Court of her the said Lady the Queen before the Queen herself, present here in Court in his proper Person, otherwise called *Henry Mills* of the *Inner Temple, London*, Gentleman, of a Plea that he render to him sixty Pounds of lawful Money of *England*, which

Bill against a
Clerk of the
King's Bench.
In Debt on a
Bond.

he owes to him, and unjustly detains, for that, to wit, That whereas the aforesaid *Henry* on the 28th Day of *June* in the second Year of the Reign of our Lady *Ann*, now Queen of *England*, &c. at *London* aforesaid, to wit, in the Parish of *Saint Mary Le Bow* in the Ward of *Cheape*, by his certain Writing obligatory, sealed with the Seal of him the said *Henry*, and now here shewn to the Court of the said Lady the now Queen, the Date whereof is the same Day and Year, acknowledged himself to be held and firmly bound to the said *John* in the said 60 *l.* to be paid to the said *John*, when he should be thereunto afterwards requested: Nevertheless the said *Henry*, although often requested, &c. the said 60 *l.* to the said *John* hath not yet paid, but to pay the same to him, hath hitherto absolutely denied, and yet doth deny, to the Damage of the said *John* of ten Pounds: and thereupon he brings Suit, &c.

And the said *Henry Mills*, present here in Court in his proper Person, defends the Force and Injury, &c. and prays Oyer of the said Writing obligatory, and it is read to him, &c. he also prays Oyer of the Condition of the same Writing, and it is read to him in these Words, that is to say, *Bond*.

The Condition of this Obligation is such, that if the above-bounden *Henry Mills*, his Heirs, Executors or Administrators, do well and truly pay or cause to be paid unto the above-named *John Nutt*, his Executors, Administrators or Assigns, the full Sum of 30 *l.* of good and lawful Money of *England*, together with the Interest thereof after the Rate of 6 *l. per Centum per Annum*, at or upon the twelfth Day of *July* next ensuing the Date hereof, then this Obligation to be void, or else to remain in full Force and Virtue; which being read and heard, he the said *Henry* prays Judgment of the Bill aforesaid, because he saith, that the said *John*, to wit, on *Friday* the 22d Day of *October* in the above-said second Year of the Reign of the said Lady the now Queen, of *England*, &c. took upon himself the Order of Knighthood, and now is a Knight; and this he is ready to verify: Wherefore he prays Judgment of the Bill aforesaid, and that the said Bill may be quashed, &c.

And the said *John* saith, that by any Thing by the said *Henry* above in pleading alledged, the Bill of him the said *John* ought not to be quashed, because he saith, that the Plea aforesaid by the said *Henry* in Manner and Form aforesaid above pleaded, and the Matter in the same contained, are not sufficient in Law to quash the said Bill of him the said *John* against the said *Henry*; to which said Bill the said

Oyer of the

Plea, that the Plaintiff is a Knight, in Abatement.

Demurrer.

PLEADINGS TO THE CASES.

Joinder in
Demurrer.

said *John* hath no Necessity, neither is he bound by the Law of the Land in any Manner to answer; and this he is ready to verify: Wherefore for want of a sufficient Answer in this Behalf, he the said *John* prays Judgment, and that the Bill of him the said *John* may be adjudged good, and that the said *Henry* may answer to the said Bill, &c.

And that the said *Henry* saith, that the Plea aforesaid by him the said *Henry* in Manner and Form aforesaid above pleaded, and the Matter in the same contained, are good and sufficient in Law to quash the Bill of him the said *John* against the said *Henry*; which said Plea, and the Matter therein contained, he the said *Henry* is ready to verify and prove, as the Court, &c. And because the said *John* hath not answered to that Plea, nor hath hitherto in any Manner denied it, he the said *Henry* as before prays Judgment, and that the said Bill may be quashed, &c. But because the Court of the said Lady the Queen now here is not yet advised to give their Judgment of and concerning the Premises, Day is thereupon given to the Parties aforesaid before the Lady the Queen at *Westminster* until next after to hear their Judgment of and concerning the Premises, for that the Court of the said Lady the Queen now here is not yet, &c.

Respondent Ouster.

Pleas before our Sovereign Lady the Queen at Westminster of the Term of Saint Hilary in the first Year of the Reign of the Lady Ann, now Queen of England, &c. Roll 560.

Lysney against Selby. 2 Ld. Ryam. 1118.

Action on the *Middlesex*, (to wit)
Case for a
Deceit.

BE it remembred, that heretofore, that is to say, in the Term of Saint Michael last past before the Lady the Queen at *Westminster* came *Mary Lysney*, Widow, by *John Compton* her Attorney, and brought here into the Court of the said Lady the Queen then there her certain Bill against *Gerrard Selby* in custody of the Marshal, &c. of a Plea of Trespass upon the Case; and there are Pledges of prosecuting to wit, *John Doe* and *Richard Roe*; which said Bill follows in these Words, to wit, *Middlesex*, to wit, *Mary Lysney*, Widow, complains of *Gerrard Selby*, in Custody of the Marshal of the *Narshalsea* of the Lady the Queen, being before the Queen herself, for that, to wit, that whereas on the 2d Day of *March* in the 14th Year of the Reign of the

Lord

Lord *William* the Third, late King of *England*, &c. at the Parish of *Saint John Wapping* in the County aforesaid, a certain Conversation was had and moved between the said *Gerrard* and her the said *Mary* of and concerning the purchasing of fourteen Messuages, with the Appurtenances, of him the said *Gerrard*, situate and lying in the Parish of *Saint John Wapping* in the County aforesaid, by her the said *Mary* of the said *Gerrard*, to which or to the Equity of Redemption thereof he the said *Gerrard* then and there had a Title, and of the Remainder of a certain Term of sixty-one Years commencing on the Morrow of the Feast of the Annunciation of the Blessed Virgin *Mary*, which was in the Year of our Lord 1683, then to come and unexpired: And upon the Conversation aforesaid the said *Gerrard* then and there falsely, fraudulently and deceitfully asserted and affirmed to the said *Mary*, that the said 14 Messuages, with the Appurtenances, were then letten for the yearly Rent of 68 *l.* which said Assertion and Affirmation of the said *Gerrard* by him then and there so made, she the said *Mary* believing to be true, she the said *Mary* afterwards, to wit, the same Day and Year first aforesaid, at the Parish aforesaid in the County aforesaid, bought of the said *Gerrard* the said 14 Messuages, with the Appurtenances, for a great Sum of Money, to wit, for five Shillings to the said *Gerrard* by her the said *Mary* then and there in Hand paid, and for 200 *l.* from him the said *Gerrard* to her the said *Mary* then before owing, for Money by her the said *Mary* to the said *Gerrard* then before lent; and thereupon the said *Gerrard*, by a certain Indenture of Assignment then and there made between the said *Gerrard* of the one Part, and the said *Mary* of the other Part, bargained, sold and assigned to the said *Mary* the said 14 Messuages with the Appurtenances, and the Equity of Redemption thereof, to hold to the said *Mary* and her assigns for the Residue and Remainder of the said Term of 61 Years then to come and unexpired, when in Truth and in Fact the said 14 Messuages with the Appurtenances, at the said Time of the said Assertion and Affirmation of the said *Gerrard* as aforesaid made, and at the Time of the Buying and Assignment thereof were letten for 52 *l.* 10 *s.* only, and no more, to wit, at the Parish aforesaid in the County aforesaid: And so the said *Mary* saith, that the said *Gerrard* her the said *Mary* then and there falsely and fraudulently deceived and defrauded; whereupon she the said *Mary* saith, that she is injured, and hath

D

Damage

PLEADINGS TO THE CASES.

Damage to the Value of 200 l. and thereupon she brings Suit, &c.

Defendant pleads Not guilty.

Verdict for the Plaintiff. Damages 20 l.

By Indictment, of Easter Term in the fourth Year of Queen Ann.

The Queen against Smith. 2d Ld. Raym. 1144.

Error upon an
Indictment
for Usury be-
fore the Ju-
stices of Mid-
dlesex.

Middlesex. **H** Eretofore, that is to say, on the 8th Day of March in 4th Year of the Reign of our Sovereign Lady Ann, by the Grace of God, of England, Scotland, France and Ireland Queen, Defender of the faith, &c. before the said Lady the Queen at *Westminster*, the said Lady the Queen sent to the Keepers of her Peace, and to the Justices assigned to keep the Peace within the County of *Middlesex*, and also to hear and determine divers Felonies, Trespasses, and other Misdemeanors committed in the same County, her Writ close in these Words, to wit: *Ann* by the Grace of God, of *England, Scotland, France and Ireland* Queen, Defender of the faith, &c. To the Keepers of our Peace, and to our Justices assigned to keep the Peace within the County of *Middlesex*, and also to hear and determine divers Felonies, Trespasses, and other Misdemeanors committed in the same County, and to every of them greeting: Because in the Record and Process, and also in the giving of Judgment upon a certain Indictment against *Dorothy Smith*, late of the Parish of *Saint Clement Danes* in the County of *Middlesex*, Widow, for certain Trespasses and Contempts against the Form of the Statute set forth against unlawful Usury, whereof before you she hath been indicted, and is thereupon convicted by a certain Jury of the Country taken between us and the said *Dorothy*, as it is said, manifest Error hath intervened, to the great Damage of her the said *Dorothy*, as from her Complaint we have received Information: We willing in this Behalf to correct the Error in due Manner, if any there shall be, and to give speedy Justice by done to her the said *Dorothy*, command you, that if Judgment thereupon be given, then that you send the Record and Process aforesaid, with all Things touching the same, to us, under your Seals, or the Seal of one of you, distinctly and openly, and this Writ; so that we may have them in fifteen Days from *Easter Day* wheresoever we shall then be in *England*, that inspection

the Record and Process aforesaid, we may further do thereupon for correcting the Error, *that* which of Right and according to the Law and Custom of our Realm of *England* shall be to be done. Witness Ourselves at *Westminster* the 8th Day of *March* in the 4th Year of our Reign. *Barnes.*

By Virtue of this Writ to me and others directed, I send the Record of Conviction of the within named *Dorothy Smith*, whereof mention is made in this Writ, with all Things touching the same annexed to this Writ, before the Lady the Queen, as it is within commanded. The Answer of *Wriotbesly* Duke of *Bedford*, one of the Justices within written.

Which said Writ and Record mentioned in the same were returned and certified as follows :

Middlesex, (to wit) **B**E it remembred, that at the General Quarter-Sessions of the Peace of the Lady the Queen, holden for the County of *Middlesex* at *Hicks Hall* in *Saint John Street* in the County aforesaid, on *Friday* in the Week next after the Feast of the *Epiphany*, to wit, the twelfth Day of *January* in the third Year of the Reign of our Lady *Ann*, by the Grace of God, of *England*, *Scotland*, *France* and *Ireland* Queen, Defender of the Faith, &c. before *James Mundy*, Serjeant at Law, *Ralf Bucknall*, *Francis Tyssen*, *Thomas Owen*, *Edmund Prideaux*, *Joseph Offley*, *John Herbert*, *Nicholas Woolstenholme*, *John Pery*, *Martin Ryder*, *Richard Woodward* and others, their Fellows Justices of the said Lady the Queen, assigned to keep the Peace in the County aforesaid, and also to hear and determine divers Felonies, Trespasses, and other Misdemeanors committed in the same County, by the Oath of *William Rathbone*, *George Bishop*, *Laurence Grosse*, *William Smith*, *Peter Sparks*, *Robert Bending*, *William Smart*, *Edward Hicks*, *Anthony Fryer*, *John Farren*, *John Sutton*, *Nicholas Meeter*, *Edward Davenport*, *Richard Hale*, *Jeremiah Mason*, *Thomas Derry*, *Thomas Ward*, *Peter Sharp*, *Moses Wilkinson*, *Robert Pitts*, *Nabum Crossley*, and *Thomas Beanman*, honest and lawful Men of the County aforesaid, then and there sworn and charged to enquire for the said Lady the Queen for the Body of the County aforesaid, it is presented, that *Dorothy Smith*, late of the Parish of *Saint Clement Danes* in the County of *Middlesex*, Widow, on the 20th Day of *August* in the third Year of the Reign of the Lady *Ann*, by the Grace of God, Queen of *England*, &c. at the Parish aforesaid in the County aforesaid

PLEADINGS TO THE CASES.

Defendant
pleads Not
guilty.

aforesaid, lent and advanced to one *Richard Jones* the Sum of 5 *l.* of lawful Money of *England*, to be paid to the said *Dorothy* upon the 8th Day of *January* from thence next following in the Year aforesaid. And the same *Dorothy Smith* afterwards, to wit, on the said 8th Day of *January* in the Year aforesaid, at the Parish aforesaid in the County aforesaid, unjustly and corruptly received and had of the said *Richard Jones*, for deferring and giving Day of Payment of the said Sum of five Pounds for the Time aforesaid, twelve Shillings and six Pence of lawful Money of *England*; which said Sum of 12 *s.* 6 *d.* by the said *Dorothy* so as aforesaid of the said *Richard* received and had for deferring and giving Day of Payment of the said Sum of 5 *l.* for the Time aforesaid, exceedeth the Sum of six Pounds by the hundred Pounds for one whole Year, contrary to the Form of the Statute in such Case made and provided, and against the Peace of the said Lady the now Queen, her Crown and Dignity; wherefore the Sheriff of the County of *Middlesex* is commanded, that he do not omit, &c. but that he cause the said *Dorothy Smith* to come to answer, &c. Upon which afterwards, to wit, at the same General Quarter-Sessions of the Peace of the said Lady the Queen, held for the County aforesaid at *Hicks Hall* aforesaid in the County aforesaid, on the said *Friday* the 12th Day of *January* in the third Year of the Reign of the said Lady the Queen aforesaid, before the said Justices of the said Lady the Queen and others, their Fellows aforesaid, cometh the said *Dorothy Smith* in her proper Person and having heard the Indictment aforesaid, the same *Dorothy* saith, that she is not guilty thereof; and of this she puts herself upon the Country: And *Simon Harcourt*, Esq. Clerk of the Peace of the County aforesaid, who prosecuted for the said Lady the Queen in this Behalf, likewise, &c. Therefore let a Jury thereupon come before the Justice of the said Lady the Queen, assigned to keep the Peace in the County aforesaid, and also to hear and determine divers Felonies, Trepasses, and other Misdemeanors committed in the same County, and who, &c. to recognize, &c. because &c. The same Day is given as well to the said *Simon Harcourt*, who prosecutes, &c. as to the said *Dorothy Smith*, here, &c. Whereupon at the next General Sessions of the Peace, to wit, at the General Sessions of the Peace of the said Lady the Queen, holden for the County aforesaid at *Hicks Hall* aforesaid in *Saint John Street* aforesaid in the County aforesaid, to wit, on the 26th Day of *February* in the 3d Year of the Reign of the said Lady the Queen

Queen above-said, before *Joseph Offley, John Herbert, John Bond, John Crosbie, Benjamin Hilton*, Esquires, and others, their Fellows, Justices of the said Lady the Queen, assigned to keep the Peace in the County aforesaid, and also to hear and determine divers Felonies, Trespasses, and other Misdemeanors committed in the same County, come as well the said *Simon Harcourt*, who prosecutes, &c. as the said *Dorothy Smith*, in their proper Persons; and the Jurors of the Jury impanelled by the said Sheriff for this Purpose, to wit, *Nataniel Candler, William Gunson, Robert Moore, William Giles, Robert Wheeley, Edward Reynolds, Edward Hampsted, John Searle, William Ashman, Benjamin Mills, Richard Winch and William Weaver*, being called, come, who being chosen, tried and sworn to speak the Truth of and concerning the Premises aforesaid, say upon their Oath, that the said *Dorothy Smith* is guilty of the Premises afore-Verdict, De-said in the Indictment aforesaid above specified, above laid fendant is to her Charge in Manner and Form as by the Indictment guilty. aforesaid is above supposed against her: Whereupon all and singular the Premises being seen and understood by the Court here, it is considered by the Court here, that the said *Dorothy Smith* do pay to the said Lady the Queen the Sum of 15 *l.* for her Fine by the Court here above laid upon Fine 15 *l.* her, according to the Form of the Statute in that Case made and provided, for and by reason of the Premises whereof she the said *Dorothy Smith* as aforesaid is convicted, and that she the said *Dorothy Smith* be taken, &c. which said *Dorothy Smith* being present here in Court, by the Court aforesaid, is committed to the *New Prison* of the said Committed to Lady the Queen at *Clerkenwell* in the County aforesaid, Prison. there to remain until she shall pay the Fine aforesaid, &c. And now, to wit, on *Saturday* next after one Month of *Easter* in this same Term, before the said Lady the Queen at *Westminster* cometh the said *Dorothy Smith* in her proper Person, who is committed to the Marshal, &c. and she immediately saith, that in the Record and Process afore-Error assigned. said, and also in the giving of the Judgment aforesaid against her the said *Dorothy Smith*, there is manifest Error in this, to wit, that the Indictment aforesaid against her, and the Matter in the same contained, are not sufficient in Law to warrant the Judgment against her now given, or to convict her of the Trespass and Offence aforesaid; therefore in that there is manifest Error: There is also Error in this, to wit, that where by the Record aforesaid it appears that Judgment upon the Indictment aforesaid was given against her the said *Dorothy Smith* in Form aforesaid, that Judgment,

PLEADINGS TO THE CASES.

ment, by the Law of this Realm of *England*, ought to have been given for the same *Dorothy*, that she be thereof acquitted, and go thereupon without Day: Therefore in that there is manifest Error. And the said *Dorothy* prays that the Judgment aforesaid for the Errors being in the Record and Process aforesaid may be reversed and annulled, and absolutely be had for nothing; and that she may be restored to the Common Law of this Realm of *England*, and to all Things which she hath lost upon the aforesaid Occasion.

Pleas before the Lady the Queen at Westminster of Easter Term in the third Year of the Reign of the Lady Ann, now Queen of England, &c.

The Queen against Best and others. 2 *Ld. Raym.* 1167.

Indictment
for falsely
charging one
with being
the Father of
a Bastard
Child.

London, (to wit) **H**eretofore, that is to say, on *Friday* the 14th Day of *January* in the 2d Year of the Reign of our Lady *Ann*, by the Grace of God, of *England*, *Scotland*, *France*, and *Ireland* Queen, Defender of the Faith, &c. at the General Quarter-Sessions of the Peace of the Lady the Queen, holden for the City of *London* at the *Guibald* of the said City, and within the same City, before *John Parsons* Knight, Mayor of the City of *London*, *Robert Clayton* Knight, *William Pritchard* Knight, *William Gore* Knight, Aldermen in the City aforesaid, and *Salathiel Lovel*, one of the Serjeants at Law of the said Lady the Queen, and Recorder of the said City, and others their Fellows Justices, assigned to keep the Peace in the City aforesaid, and also to hear and determine divers Felonies, Trespasses, and other Misdemeanors committed within the same City, by the Oath of twelve Jurors, honest and lawful Men of the City of *London* aforesaid, then and there being sworn and charged to inquire for the said Lady the Queen for the Body of the City aforesaid, it was presented, that *Richard Best*, late of *London* Yeoman, *Philip Jackson*, late of *London* Yeoman, *Richard Grimes*, late of *London* Yeoman, and *Elizabeth Church*, late of *London* Spinster, otherwise called *Elizabeth Ellis*, late of *London* Spinster, otherwise called *Elizabeth Carter*, late of *London* Spinster, being Persons of evil Name, Fame and dishonest Conversation, and not endeavouring to seek their Living by honest Labour, according to the Laws of this Kingdom of *England*, but compassing, devising and conspiring among themselves by what unlawful Means they might unlawfully and unjustly obtain and acquire into their Hands and Possession

session the Goods, Chattels and Money of the honest liege Men and Subjects of the said Lady the Queen, to maintain their dishonest and diabolical Course of Living, on the 18th Day of *December* in the 2d Year of the Reign of our Lady *Ann*, by the Grace of God, of *England, Scotland, France, and Ireland* Queen, Defender of the Faith, &c. falsely, unlawfully, wickedly and craftily contriving, intending and conspiring and devising among themselves to deceive and defraud one *Peter Pickering* the younger of *London* Mercer, not only of his Monies, but also to deprive him the said *Peter* of his good Name, Fame, Estate and Credit, and to bring the said *Peter* into the greatest Hatred, Scandal, Contempt and Infamy amongst all the liege Men and Subjects of the said Lady the Queen, on the 18th Day of *December* in the 2d Year abovesaid at *London* aforesaid in the Parish of *Saint Vedast*, otherwise *Foster's*, in the Ward of *Farringdon Within*, falsely, unlawfully, deceitfully, maliciously, and for the Cause of wicked Gain conspired, contrived, consulted and agreed among themselves falsely, unjustly, wickedly and diabolically to charge and accuse the said *Peter Pickering* to be the Father of a Child whereof the said *Elizabeth Ellis*, otherwise *Church*, otherwise *Carter*, was then pregnant, as they then and there pretended; and by the Conspiracy among them so as aforesaid before had, then and there with Force and Arms, &c. they did falsely and maliciously affirm, and every one of them then and there did falsely and maliciously affirm, that he the said *Peter* then lately before had carnal Knowledge of the Body of her the said *Elizabeth Church*, otherwise *Ellis*, otherwise *Carter*, and had carnally known the said *Elizabeth Ellis*, otherwise *Church*, otherwise *Carter*, and that he the said *Peter* was the Father of the pretended Child whereof the said *Elizabeth Church*, otherwise *Ellis*, otherwise *Carter*, then was pregnant, as she asserted and pretended: And that for the further Execution of the Premises, they the said *Richard Best*, *Philip Jackson*, *Richard Grimes* and *Elizabeth Church*, otherwise *Ellis*, otherwise *Carter*, then and there agreed and concluded amongst themselves, that he the said *Richard Best* should go to the said *Peter*, and should falsely, wickedly, maliciously, and for the Sake of wicked Gain should charge and accuse him the said *Peter*, that he the said *Peter* then lately before had had carnal Knowledge of the Body of the said *Elizabeth Church*, otherwise *Ellis*, otherwise *Carter*, and had carnally known her the said *Elizabeth Church*, otherwise *Ellis*, otherwise *Carter*, and that he the said *Peter* was the Father of the said pretended Child

PLEADINGS TO THE CASES.

The Indictment removed into B. R.

Defendants demur.

Joinder in Demurrer.

whereof they pretended that she the said *Elizabeth* was pregnant. And the Jurors aforesaid upon their Oath aforesaid further say, that the said *Richard Best* in Execution of the Premisses, and according to the said Conspiracy, Consultation, and Agreement among them the said *Richard Best*, *Philip Jackson*, *Richard Grimes* and *Elizabeth Church*, otherwise *Ellis*, otherwise *Carter*, as aforesaid before had, afterwards, to wit, on the said 18th Day of *December* in the 2d Year aforesaid, at the Parish and Ward aforesaid, and at divers other Places within the City aforesaid, with Force and Arms, &c. falsely, wickedly, maliciously, diabolically, and for the Sake of wicked Gain, in the Hearing of many faithful liege Men and Subjects of the said Lady the Queen, charged and accused the said *Peter*, that he the said *Peter* then lately before had had carnal Knowledge of the Body of the said *Elizabeth Church*, otherwise *Ellis*, otherwise *Carter*, and had carnally known her the said *Elizabeth Church*, otherwise *Ellis*, otherwise *Carter*, and that he the said *Peter* was the Father of the said pretended Child whereof they affirmed the said *Elizabeth Church*, otherwise *Ellis*, otherwise *Carter*, then was pregnant, to the great Damage, Scandal and Defamation of the said *Peter Pickering* the younger, to the worst and most pernicious Example of all others offending in the like Case, and against the Peace of the said Lady the now Queen, her Crown and Dignity; which said Indictment the Lady the now Queen afterwards for certain Causes hath caused to come to be determined before her: Wherefore the Sheriffs of *London* were commanded, that they should cause them to come to answer, &c. And now, to wit, on *Wednesday* next after five Weeks of *Easter* in this same Term before the Lady the Queen at *Westminster* come the aforesaid *William Best*, *Philip Jackson* and *Elizabeth Ellis*, by *Benedict Brown* their Attorney, and, having severally heard the Indictment aforesaid, say, that they do not apprehend that the said Lady the Queen will or ought farther to impeach or occasion them the said *Richard*, *Philip* and *Elizabeth*, or any of them, for the Premisses, because they say, that the Indictment aforesaid is not sufficient in Law, to which they and each of them have no Necessity, nor are they bound by the Law of the Land in any Manner to answer: And for the Insufficiency thereof they pray Judgment, and that they may be dismissed by the Court here concerning the Premisses, &c.

And *Samuel Astry*, Knt. Coroner and Attorney of the Lady the Queen, in the Court of the said Queen before the Queen

Queen herself, who prosecutes for the said Lady the Queen in this Behalf for the said Lady the Queen saith, that the Indictment aforesaid, and the Matter therein contained, are good and sufficient in Law to compel them the said *Richard Best, Philip Jackson and Elizabeth Ellis* to answer the said Indictment: Wherefore for want of a sufficient Answer in this Behalf he prays Judgment, and that they by the Court here may be convicted of the Premises, &c.

By Indictment, of the Term of Saint Hilary in the third Year of the Lady Ann, Queen of England, &c.

The Queen against the Inhabitants of Stretford. 2 Ld. Raym. 1169.

Lancashire, **H**eretofore, that is to say, on the 30th Day of June in the third Year of the Reign of the Lady Ann, by the Grace of God, Queen of *England, Scotland, France, and Ireland*, Defender of the Faith, &c. before the said Lady the Queen at *Westminster*, the said Lady the Queen sent to the Great Session of the County of *Lancaster*, and also to the Keepers of her Peace in the County aforesaid, and to her Justices, assigned to hear and determine divers Felonies, Trespasses, and other Misdemeanors committed in the same County, and to every of them, her Writ close in these Words, to wit, *Ann* by the Grace of God, of *England, Scotland, France and Ireland* Queen, Defender of the Faith, &c. To the Justices of the Great Session of the County of *Lancaster*, and also to the Keepers of our Peace in the County aforesaid, and to our Justices assigned to hear and determine divers Felonies, Trespasses, and other Misdemeanors committed in the same County, and to every of them, greeting: Because in the Record and Process, and also in the giving of Judgment of a certain Indictment made before you, or some of you, against the Men, Inhabitants in *Stretford* in the County aforesaid, for certain Trespasses, Contempts and Nuisances for not repairing and amending our Highway within *Stretford* aforesaid, whereof they are indicted, and thereupon are convicted by a certain Jury of the Country thereupon taken between us and the aforesaid Inhabitants, as it is said, manifest Error hath intervened, to the great Damage of the said Inhabitants, as from their Complaint we have received Information: We willing that the Error (if any there shall be) in due Manner be corrected, and that full and speedy Justice be done to the same Inhabitants in this Behalf,

Error on an Indictment for not repairing an Highway.

PLEADINGS TO THE CASES.

half, command you, if Judgment thereupon be given then, that you send to us the Record and Process aforesaid, with all Things touching the same, under your Seals, or the Seal of one of you, distinctly and openly, and this Writ, so that we may have them from the Day of Saint *Michael* in three Weeks, wheresoever we shall then be in *England*, that inspecting the Record and Process aforesaid, we may further do thereupon, for the correcting that Error, that which of Right, and according to the Law and Custom of our Realm of *England*, shall be to be done. Witness Ourself at *Westminster* the 30th Day of *June* in the third Year of our Reign.

The Execution of this Writ appears in a certain Schedule to this Writ annexed, *Christopher Dauntsey, Edward Cheffham*; which said Writ and Record in the same mentioned were returned and certified as follows:

Lancashire, (to wit) **A**T the General Quarter-Session of the Peace of the said Lady the Queen, holden at *Lancaster* in and for the County Palatine of *Lancaster*, on *Tuesday*, to wit, the 13th Day of *July* in the 2d Year of the Reign of the Lady *Ann*, by the Grace of God, of *England, Scotland, France and Ireland* Queen, Defender of the Faith, &c. before *Edward Wilson, Esq; Charles Rigby, Esq; William Buckley, Esq; and Thomas Sheirson, Esq;* Justices of the said Lady the Queen, assigned to keep the Peace of the said Lady the Queen in the County aforesaid, and also to hear and determine divers Felonies, Trespasses, and other Misdemeanors committed in the said County. The same General Quarter-Sessions of the Peace is adjourned by the said Justices of the said Lady the Queen, being in the Court, until *Thursday*, to wit, the 15th Day of the same Month of *July*, to be holden at *Preston* in *Amounderness*, in and for the County aforesaid; at which said Session of the Peace of the said Lady the Queen, holden by Adjournment aforesaid at *Preston* in *Amounderness* aforesaid, in and for the County aforesaid, on the said *Thursday* the 15th Day of *July* in the 2d Year above-said, before *Richard Fleetwood, Esq; William Farrington, Esq; Richard Longworth, Esq; and Thomas Foster, Esq;* Justices of the said Lady the Queen, assigned to keep the Peace in the County aforesaid, and also to hear and determine divers Felonies, Trespasses, and other Misdemeanors committed in the same County. The said Session of the Peace of the said Lady the Queen is further adjourned

Quarter-Sessions adjourned to *Preston*.

adjourned by the same Justices of the said Lady the Queen last mentioned, being in the Court, until *Monday* the 19th Day of the same Month of *July*, to be holden at *Ormeskirke*, in and for the County aforesaid; at which said Session of the Peace of the said Lady the Queen, holden by that Adjournment at *Ormeskirke*, aforesaid, in and for the said County, on the said *Monday*, to wit, the 19th Day of *July* in the 2d Year aforesaid, before the Honourable *Charles Stanley*, Esq; *Thomas Stanley*, Bart. *Roger Bradshaigh*, Bart. *Richard Bold*, Esq; *William Farrington*, Esq; *Robert Mawdesley*, Esq; *Thomas Asburst*, Esq; *Jonathan Blackburne*, Esq; and *Thomas Johnson*, Esq; Justices of the said Lady the Queen, assigned to keep the Peace of the said Lady the Queen in the County aforesaid, and also to hear and determine divers Felonies, Trespasses, and other Misdemeanors committed in the same County. That Sessions of the Peace is adjourned by the same Justices of the said Lady the Queen last named, being in the Court, until *Thursday*, to wit, the 22d Day of the same Month of *July*, to be holden at *Manchester*, in and for the County aforesaid: At which said Session of the Peace of the said Lady the Queen, holden by that Adjournment at *Manchester* aforesaid, in and for the County aforesaid, on the said *Thursday* the 22d Day of *July* in the 2d Year aforesaid, before *George Birch*, Esq; *Richard Entwistle*, Esq; *Charles Hilton*, Esq; and *Christopher Dauntsey*, Esq; Justices of the said Lady the Queen, assigned to keep the Peace of the said Lady the Queen in the County aforesaid, and also to hear and determine divers Felonies, Trespasses, and other Misdemeanors committed in the County aforesaid.

Adjourned to
Ormeskirke.

Further ad-
journed to
Manchester.

An Inquisition is taken at *Manchester* aforesaid, in and for the County aforesaid, before the Justices last named, on the said 22d Day of *July*, in the 2d Year aforesaid, by the Oath of *Daniel Gaskell* of *Clifton cum Pendlebury*, Gent. *Thomas Moss* of *Manchester*, Gent. *John Holme* of *Heaton Norris*, Gent. *Jonathan Dawson* of *Manchester*, Gent. *Robert Rawald* of *Broughton*, Gent. *William Booth* of *Ryton*, Gent. *John Booth* of the same Gent. *Michael Flitcraft* of *Manchester*, Gent. *John Odcroft* of the same, Gent. *George Rideing* of *Cetham*, Gent. *Richard Hill* of *Hundersfield*, Gent. *William Sharlock* of *Barton*, Gent. *James Bradshaw* of the same, Gent. *James Chadwick* of the same, Gent. *John Gee* of the same, Gent. *Edmund Smetbarst* of *Radcliffe*, Gent. and *William Hampson* of the same, Gent. honest and lawful Men of the County aforesaid,

PLEADINGS TO THE CASES.

The Bill of
Indictment
found

said, then and there sworn and charged to inquire for the said Lady the Queen and the Body of the County aforesaid, who say, and present upon their Oath, that the Queen's Highway within *Stretford*, in the County of *Lancaster*, between the West-End of a certain Lane within *Urmeston* in the County aforesaid, and a certain Place called *Stretford Cross*, for the Space of fifty Rodds, or thereabouts, leading between the Village of *Flixton* in the County of aforesaid, and the Market-Town of *Stockport* in the County of *Chester*, on the 11th Day of *January* in the first Year of the Reign of the Lady *Ann*, by the Grace of God, of *England, Scotland, France and Ireland* Queen, Defender of the Faith, &c. at *Stretford* aforesaid, in the County of *Lancaster* aforesaid, was, and yet is very dirty and muddy, and so narrow, that the Liege-Men and Subjects of the said Lady the Queen, by, and through the said Way, by themselves, or with their Horses, Oxen, Carts and Carriages, cannot go, return, pass, ride, and labour, without great Peril of their Lives and Goods, to the common Nuisance of all the Liege-People and Subjects of the said Lady the Queen, whom it concerns, to go, return, pass, ride, and labour, by, and through the said Queen's Highway, and against the Peace of the said Lady the Queen, &c. And that the Inhabitants of *Stretford* aforesaid, from Time whereof the Memory of Man is not to the contrary, have used, and been accustomed, and ought to repair and amend the same Way, as often as, and when need should be.

At a Quarter-
Session at
Lancaster.

Afterwards, that is to say, at the General Quarter-Sessions of the Peace of the Lady the Queen, holden at *Lancaster*, in and for the County Palatine of *Lancaster* aforesaid, on *Tuesday*, to wit, the 11th Day of *January* in the 2d Year of the Reign of the Lady *Ann*, by the Grace of God, of *England, Scotland, France and Ireland* Queen, Defender of the Faith, &c. before *Edward Wilson*, Esq; *Thomas Shierston*, Esq; and *John Hodgson*, Esq; Justices of the said Lady the Queen, assigned to keep the Peace of the said Lady the Queen in the County aforesaid, and also to hear and determine divers Felonies, Trespasses, and other Misdemeanors committed in the same County, that same General Quarter-Session of the Peace is adjourned by the Justices of the said Lady the Queen until *Thursday*, to wit, the 13th Day of the same Month of *January*, to be holden at *Preston* in *Amounderness*, in and for the County aforesaid; at which said General Quarter-Session of the Peace of the said Lady the Queen, holden by Adjournment

Adjourned to
Preston.

jourment aforesaid at *Preston* in *Amounderness* aforesaid, in and for the County aforesaid, on the said *Thursday*, to wit, the 13th Day of *January* in the 2d Year aforesaid, before *Richard Fleetwood*, Esq; *Thomas Rigby*, Esq; *Edward Rigby*, Esq; and *Richard Longworth*, Esq; Justices of the said Lady the Queen, assigned to keep the Peace in the County aforesaid, and also to hear and determine divers Felonies, Trespasses, and other Misdemeanors committed in the same County, the said General Quarter-Session of the Peace of the Lady the Queen is further ad-
 journed by the same Justices of the said Lady the Queen last named until *Monday*, to wit, the 17th Day of the same Month of *January*, to be holden at *Wygan*, in and for the County aforesaid; at which said General Quarter-Session of the Peace of the said Lady the Queen, holden by that Adjournment at *Wygan* aforesaid in the County aforesaid on *Monday*, to wit, the 17th Day of *January* in the 2d Year aforesaid, before *Thomas Stanley*, Bart. *William Farrington*, Esq; *Thomas Ashurst*, Esq; *Jonathan Blackburne*, Esq; *Charles Hilton*, Esq; and *Jonathan Case*, Esq; Justices of the said Lady the Queen, assigned to keep the Peace of said Lady the Queen in the County aforesaid, and also to hear and determine divers Felonies, Trespasses, and other Misdemeanors committed in the same County, That General Quarter-Session of the Peace of the said Lady the Queen is further ad-
 journed by the same Justices of the said Lady the Queen last named until *Thursday*, to wit, the 20th Day of the same Month of *January*, to be holden at *Manchester*, in and for the County aforesaid; at which said General Quarter-Session of the Peace of the said Lady the Queen, holden by that Adjournment at *Manchester*, aforesaid, in and for the County aforesaid, on the said *Thursday* the 20th Day of *January* in the 2d Year aforesaid, before *James Holt*, Esq; *Joshua Horton*, Esq; *Richard Entwistle*, Esq; *Charles Hilton*, Esq; and *Christopher Dauntsey*, Esq; Justices of the said Lady the Queen, assigned to keep the Peace of the said Lady the Queen in the County aforesaid, and also to hear and determine divers Felonies, Trespasses, and other Misdemeanors committed in the same County, *John Sherlock* and *Thomas Moss*, two of the Inhabitants of the Town of *Stretford* aforesaid, in the Name of all the Inhabitants of the same Town come and complain that they, by Colour of the Premises in the Indictment aforesaid specified, are greatly vexed and disquieted, and in this unjustly, because they protest that the Indictment aforesaid,

Further ad-
journed to
Wigan.

Further ad-
journed to
Manchester.

Two of the
Inhabitants in
the Name of
all plead Not
guilty.

PLEADINGS TO THE CASES.

Issue joined
upon *Not*
guilty.

Venire award-
ed.

Lancaster Ses-
sion.

Adjourned to
Preston.

said, and the Matter in the same contained, are not sufficient in Law, to which they have no Necessity, neither are they bound by the Law of the Land to answer: Nevertheless for Plea they say, that the Inhabitants of *Stretford* aforesaid are not guilty of the Premises laid to their charge; and of this they put themselves upon the Country; and *Nicholas Starkey*, Esq; Attorney General of the said Lady the Queen of her County Palatine of *Lancaster* aforesaid, who prosecutes for the said Lady the Queen in this Behalf likewise: Whereupon the Sheriff of the County aforesaid is commanded, that he do not omit, because of any Liberty of his County aforesaid, but that he cause to come before the Justices of the said Lady the Queen, at the General Quarter-Session of the Peace of the said Lady the Queen, after the Feast of *Easter* next coming to be holden at *Manchester* aforesaid, twelve, &c. by whom, &c. to recognize, &c. because as well, &c. The same Day is given as well to the said *Nicholas Starkey*, Esq; who prosecutes, &c. as to the said *John Sherlock* and *Thomas Moss*, two of the Inhabitants of *Stretford* aforesaid, in the Name of all the Inhabitants of the said Town; at which said General Quarter-Session of the Peace, to wit, at the General Quarter-Session of the Peace of the Lady the Queen, holden at *Lancaster*, in and for the County Palatine of *Lancaster* aforesaid, on *Tuesday*, to wit, the 25th Day of *April* in the third Year of the Reign of the Lady *Ann*, by the Grace of God, of *England*, *Scotland*, *France* and *Ireland* Queen, Defender of the Faith, &c. before *Roger Kirkby*, Esq; *Edward Wilson*, Esq; *Thomas Sheirson*, Esq; *John Hodgson*, Esq; and *William Buckley*, Esq; Justices of the said Lady the Queen, assigned to keep the Peace of the said Lady the Queen in the County aforesaid, and also to hear and determine divers Felonies, Trespases, and other Misdemeanors committed in the same County, that same General Quarter-Session of the Peace of the said Lady the Queen is adjourned by the said Justices of the said Lady the Queen until *Thursday*, to wit, the 27th Day of the same Month of *April*, to be holden at *Preston* in *Amounderness*, in and for the County aforesaid; at which said General Session of the Peace of the said Lady the Queen, held by adjournment aforesaid at *Preston* in *Amounderness* aforesaid, in and for the County aforesaid, on the said *Thursday*, to wit, the 27th Day of *April* in the 3d Year aforesaid, before *Richard Fleetwood*, Esq; *William Farrington*, Esq; *Thomas Rigby*, Esq; *Richard Langworth*, Esq; and *Thomas Foster*, Esq; Justices of the said Lady the Queen

Queen, assigned to keep the Peace of the said Lady the Queen in the County aforesaid, and also to hear and determine divers Felonies, Trespasses, and other Misdemeanors committed in the same County, the said General Quarter-Session of the Peace of the said Lady the Queen is further adjourned by the same Justices of the said Lady the Queen last named, until *Monday*, to wit, the first Day of *May* in the third Year aforesaid, to be holden at *Ormeskirke*, in and for the County aforesaid; at which said Session of the Peace of the said Lady the Queen, holden by that Adjournment at *Ormeskirke* aforesaid, in and for the County aforesaid, on the said *Monday*, to wit, the first Day of *May* in the third Year aforesaid, before *Thomas Stanley, Bart. William Farrington, Esq; Thomas Asburst, Esq; Jonathan Blackburne, Esq; and Jonathan Case, Esq;* Justices of the said Lady the Queen, assigned to keep the Peace of the said Lady the Queen in the County aforesaid, and also to hear and determine divers Felonies, Trespasses, and other Misdemeanors committed in the same County, That General Quarter-Session of the Peace of the said Lady the Queen is further adjourned by the same Justices of the said Lady the Queen last named, until *Thursday* to wit, the 4th Day of *May* in the third Year aforesaid, to be holden at *Manchester*, in and for the County aforesaid; at which said General Quarter-Session of the Peace of the said Lady the Queen, holden by that adjournment at *Manchester*, aforesaid, in and for the County aforesaid, on *Thursday* the fourth Day of *May* in the third Year aforesaid, before *Ralph Asbeton Bart. Peter Egerton, Esq; Richard Entwistle, Esq; Christopher Daurtesey, Esq; and Charles Hilton, Esq;* Justices of the said Lady the Queen, assigned to keep the Peace of the said Lady the Queen in the County aforesaid, and also to hear and determine divers Felonies, Trespasses, and other Misdemeanors committed in the same County, come as well the said *Nicholas Starkey, Esq;* who prosecutes for the said Lady the Queen in this Behalf, as the said *John Sherlock* and *Thomas Moss*, two of the Inhabitants of *Stretford* aforesaid, in the Name of all the Inhabitants of the same Town, in their proper Persons; and the Jurors by the Sheriff aforesaid being called and impanelled for this Purpose, certain of them, to wit, *Peter Locker* of *Westboughton* in the County of *Lancaster* aforesaid, Gent. *Robert Lee* of the same, Gent. *Samuel Gooden* of *Heaton Norres* in the County aforesaid, Gent. *Richard Clegg* of *Spotland* in the County aforesaid, Gent.

PLEADINGS TO THE CASES.

Tales.

Verdict a-
gainst the
Defendants.

Judgment.

Fine 40 l.

Gent. *John Buckley* of *Tottington* in the County afore-
said, Gent. *James Hodgkinson* of *Ampull* in the County
aforesaid, Gent. *Edward Cooper* of *Middleton* in the Coun-
ty aforesaid, Gent. came and are sworn upon the Jury :
And because the Rest of the Jurors of the Jury did not ap-
pear, therefore others of the By-standers, by the Sheriff of
the County aforesaid being chosen, at the Request of the
said *Nicholas Starkey*, Esq; Attorney General of the said
Lady the Queen, and by the Command of the Justices,
are newly appointed, whose Names are affiled in the pa-
nel within written, according to the Form of the Statute
in such Case made and provided ; which said Jurors so
newly appointed, to wit, *Samuel Wareing* of *Bury* in the
County aforesaid, Gent. *Robert Jepsen* of *Ardwicke* in the
County aforesaid, Gent. *John Bolton* of *Tong* in the Coun-
ty aforesaid, Gent. *William Smetburst*, of *Prestwich* in
the County aforesaid, Gent. and *Robert Woolfencroft* of
Falsworth in the County aforesaid, Gent. likewise come,
and are sworn upon the Jury with the Jurors aforesaid
impanelled : Whereupon public Proclamation being made
here in Court for the said Lady the Queen, as the Custom
is, that if there was any one who would inform the said
Justices of the Lady the Queen, the Queen's Serjeant at
Law, the Queen's now Attorney General, or the Jurors
sworn aforesaid, he might come forth, and he should be
heard : And hereupon it is proceeded to the taking of the
Jury aforesaid, as well by the Jurors aforesaid first impa-
nelled and sworn, as by the other Jurors aforesaid now ap-
pearing, who being chosen, tried and sworn to speak the
Truth concerning the Premisses, together with the other
Jurors aforesaid before impanelled and sworn, say upon
their Oath, that the said Inhabitants of *Stretford* aforesaid
are guilty of the Premises in Manner and Form as by the
Indictment aforesaid for the said Lady the now Queen is
above supposed against them : Whereupon all and singular
the Premisses being seen and understood by the Court here,
it is considered by the Court, that the said Inhabitants of
Stretford aforesaid do forfeit to the said Lady the Queen,
by Occasion of the Nuisance aforesaid in not repairing the
Queen's Highway aforesaid, the Sum of forty Pounds.
And afterwards, for certain Causes the said Justices speci-
ally moving, it is ordered, that the Execution of that
Judgment be respited until the seventh Day of *July* next
coming, &c. And now, to wit, on *Wednesday* next after
fifteen Days of *Easter* in this same Term, before the said
Lady the Queen at *Westminster*, come the said *John*
Sberlock

Sherlock and *Thomas Moss*, two of the Inhabitants of *Stretford* aforesaid in the Name of all the Inhabitants of the same Town, by *Francis Pember* their Attorney, and say, that in the Record and Process, and also in the giving of Judgment against the inhabitants of *Stretford* aforesaid, there is manifest Error, in *this*, to wit, that the Indictment aforesaid, and the Matter in the same contained, are not sufficient in Law to warrant the Judgment now given against them, or to convict them of the Trespass, Contempt and Offence aforesaid; therefore in *that* there is manifest Error: There is also Error in *this*, to wit, that where by the Record aforesaid it appears that Judgment upon the Indictment aforesaid was given against the Inhabitants of *Stretford* aforesaid in Form aforesaid, that Judgment by the Law of the Land of this Realm of *England* ought to be given for the said Inhabitants, that they should be acquitted thereof, and go thereupon without Day: Therefore in *that* there is manifest Error. And the said *John Sherlock* and *Thomas Moss*, two of the Inhabitants of *Stretford* aforesaid, in the Name of all the Inhabitants of the same Town, pray that the Judgment aforesaid for these Errors, and others, being in the Record aforesaid, may be reversed, annulled, and wholly had for nothing; and that they may be restored to the Common Law of this Realm of *England*, and to all Things which they have lost by the Occasion aforesaid.

Error assigned.

By Indictment, of Easter Term in the third Year of the Reign of Lady Ann, Queen of England &c.

The Queen against Sainthill. 2 Ld. Raym. 1174.

THE Lady the Queen hath sent to the Keepers of her Peace in the County of *Devon*, and to her Justices, assigned to hear and determine divers Felonies, Trespases, and other Misdemeanors committed in the same County, and to every of them, her Writ-close in these Words, to wit, *Ann*, by the Grace of God, of *England*, *Scotland*, *France*, and *Ireland* Queen, Defender of the Faith, &c. To the Keepers of our Peace in the County of *Devon*, and to our Justices assigned to hear and determine divers Felonies, Trespases, and other Misdemeanors committed in the same County, and to every of them, greeting: Because in the Record and Process, and also in the giving of Judgment against *Samuel Sainthill*, for certain Trespases, Contempts and Nuisances, whereof the same *Samuel*

Error on an Indictment for not repairing a Bridge *rations Tenura.*

PLEADINGS TO THE CASES.

*mu*el is indicted before you, and thereupon is convicted by a certain Jury of the Country thereupon taken between us and the said *Samuel*, as it is said, manifest Error hath intervened, to the great Damage of him the said *Samuel*, as from his Complaint we have received Information: We willing that the Error, if any there shall be, in due Manner be corrected; and that full and speedy Justice be done to the said *Samuel* in this Behalf, command you, if Judgment be thereupon given, then that you send to us the Record and Process aforesaid, with all things touching the same, under your Seals, or the Seal of one of you, distinctly and openly, and this Writ, so that we may have them on the Octave of Saint *Hilary*, wheresoever we shall then be in *England*, that inspecting the Record and Process aforesaid, we may further do thereupon, for correcting that Error, *that* which of Right, and according to the Law and Custom of our Realm of *England*, shall be to be done. Witness ourself at *Westminster* in the 19th Day of *November* in the 2d Year of our Reign.

Which said Writ, and the Record in the same mentioned, were returned and certified as follows, to wit, The Record and Process of Conviction, whereof Mention is within made, with all Things touching the same, we send before the Lady the Queen, wheresoever, &c. at the Day within mentioned, in a certain Record to this Writ annexed, as it is within commanded. The Answer of two of the Justices within written, *Thomas Putt, Nicholas Martyn*.

Devonshire, (to wit) **B**E it remembered, that at the General Quarter Session of the Peace of the Lady the now Queen, holden at the Castle of *Exeter*, in and for the said County of *Devon*, on the 6th Day of *April* in the 2d Year of the Reign of the Lady *Ann*, by the Grace of God, of *England, Scotland, France and Ireland* Queen, Defender of the Faith, &c. before *Thomas Putt*, Bart. *Nicholas Martyn*, Esq; and *Richard Reynell*, Esq; and others their Fellows, Justices of the said Lady the Queen, assigned to keep the Peace in and for the County aforesaid, and also to hear and determine divers Felonies, Trespasses, and other Misdemeanors committed in the same County, by the Oath of *John Bridge*, Gent. *John Bawdon*, Gent. *Thomas Clarke*, Gent. *Robert Stone*, Gent. *George Gibbs*, Gent. *John Seaward*, Gent. *Francis Searle*, Gent. *Thomas Pearse*, Gent. *John Northcott*, Gent.
William

PLEADINGS TO THE CASES.

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William Tickle, Gent. John Whittey, Gent. Thomas Sowdon, Gent. William Elliot, Gent. Edward Browne, Gent. Philip Osmond, Gent. and Thomas Limbrey, Gent. honest and lawful Men of the County aforesaid, then and there returned, tried, sworn and charged to inquire for the said Lady the Queen, and the Body of the County aforesaid, it is presented in Manner and Form following, to wit, *Devonshire*, to wit, The Jurors for the Lady the Queen upon their Oath present, that *Samuel Saintbill* of *Bradmuch* in the County of *Devon* aforesaid, Esq; on the first Day of *April* in the 2d Year of the Reign of our Lady *Ann*, by the Grace of God, of *England, Scotland, France and Ireland* Queen, Defender of the Faith, &c. and at divers other Days and Times, as well before as afterwards, with Force and Arms, &c. at *Bradmuch* aforesaid in the County aforesaid, suffered the West Part or End of a certain common Footbridge, commonly called *Longbridge*, situate upon the River of *Culme*, in a certain common Footway there, leading from the Town of *Bradmuch* aforesaid towards, and unto the Town of *Honiton* in the same County, and containing in itself half of the same Bridge, to be so ruinous, broken, and in decay, for want of Reparation and Amendment of the same Part or End, so that by reason thereof the Liege-People and Subjects of the said Lady the Queen cannot go, pass over, or labour, in, and upon the said Bridge, as they ought, and used to do, without great Danger, to the great Damage and common Nuisance of the same Subjects and Liege-People, and against the Peace of the said Lady the now Queen, her Crown and Dignity. And they further present, that the said *Samuel Saintbill*, by reason of his Tenure of certain Lands within the Parish of *Bradmuch* aforesaid, commonly called *Oxenford*, lying near to the same Bridge, ought and used to repair and amend the said Part or End of that Bridge as often as there hath been need: Whereupon it is commanded by the same Court to the Sheriff of the County aforesaid, that he do not omit, &c. but that he cause the said *Samuel Saintbill* to come to answer, &c. Whereupon afterwards, that is to say, at the General Quarter-Sessions of the Peace of the said Lady the Queen, holden at the Castle of *Exeter*, in and for the County of *Devon* aforesaid, on the 13th Day of *July* in the 2d Year of the Reign of the said Lady the now Queen, before *Thomas Putt, Bart. Nicholas Martyn, Esq; and Richard Reynell, Esq;* and others their Fellows Justices of the said Lady the Queen, assigned to keep the Peace in and for the County aforesaid, and also to hear and determine divers

PLEADINGS TO THE CASES.

Defendant
pleads Not
guilty.

Issue joined.

Verdict Guilty.

Felonies, Trespasses, and other Misdemeanors committed in the County aforesaid, cometh the said *Samuel Saintbill* in his proper Person, and having heard the Indictment aforesaid, the said *Samuel* saith, that he is not guilty thereof; and of this he puts himself upon the Country; and *William Martyn*, Esq; then and there Clerk of the Peace of the County aforesaid, who prosecutes for the said Lady the Queen in this Behalf likewise: Therefore let a Jury come before the Justices of the said Lady the Queen, assigned to keep the Peace in and for the County aforesaid, and also to hear and determine divers Felonies, Trespasses, and other Misdemeanors committed in the same County, at the General Quarter-Session of the Peace of the said Lady the Queen, to be holden at the Castle of *Exeter*, in and for the County of *Devon* aforesaid, on *Tuesday* next after the Feast of Saint *Michael* the Archangel then next coming, who neither, &c. to recognize, &c. because as well, &c. The same Day is given as well to the said *William Martyn*, who prosecutes, &c. as to the said *Samuel Saintbill*: At which said General Quarter-Session of the Peace of the said Lady the Queen, holden at the Castle of *Exeter*, in and for the County of *Devon* aforesaid, on *Tuesday* next after the Feast of Saint *Michael* the Archangel, in the 2d Year of the Reign of the said Lady the now Queen aboveaid, before *Thomas Putt*, Bart. *Nicholas Martyn*, Esq; and *Richard Reynell*, Esq; and others their Fellows, Justices of the said Lady the Queen, assigned to keep the Peace in and for the County aforesaid, and also to hear and determine divers Felonies, Trespasses, and other Misdemeanors committed in the same County, come as well the said *William Martyn*, who prosecutes, &c. in his proper Person, as the said *Samuel Saintbill* in his proper Person; and the Jurors of the Jury aforesaid, by *George Parker*, Esq; then Sheriff of the County aforesaid, to this being impanelled, returned and called, to wit, *John Kingdome*, *Thomas Collyer*, *Sydrach Baskervill*, *William Barne*, *John Mountstephen*, *Arthur Steevens*, *Ambrose Bence*, *Francis Dennis*, *Nicholas Markell*, *Stephen Lang*, *William Bidgood*, and *George Perry*, honest and lawful Men of the County aforesaid, likewise come, who being chosen, tried, and sworn to speak the Truth concerning the Premises, say upon their Oath, that the said *Samuel Saintbill* is guilty of the Trespass and Contempt aforesaid in the said Indictment above laid to his Charge: Therefore it is considered by the same Court, that the said *Samuel Saintbill* be taken to satisfy to the said Lady the Queen of his Fine by Occasion

Occasion of the Trespass and Contempt aforesaid: And the said *Samuel Saintbill* then and there prayed that he might be admitted to a Fine with the said Lady the Queen, by the Occasion aforesaid; and thereof puts himself in the Mercy of the said Lady the Queen, and the Fine of the same *Samuel* is assessed by the Justices aforesaid to ten Pounds. And the Sheriff of the County aforesaid is commanded by the said Justices that he do not omit, &c. but that he distrain the said *Samuel Saintbill* by all his Lands, &c. and that of the Issues, &c. so that he do repair and amend the said West Part or End of the said Bridge at his own proper Expences, Costs and Charges, if it be not before repaired and amended by him the said *Samuel*; and in what Manner, &c. And now, to wit, on *Wednesday* next after fifteen Days of *Easter* in this same Term, before the Lady the Queen at *Westminster*, cometh the said *Samuel Saintbill* in his proper Person, and saith, that in the Record and Process aforesaid, and also in the giving of the Judgment aforesaid against him the said *Samuel Saintbill*, there is manifest Error, in this, to wit, that the Indictment aforesaid against him the said *Samuel Saintbill*, and the Matter in the same contained, are not sufficient in Law to warrant the Judgment against him the said *Samuel Saintbill* now given, or to convict him of the Trespass, Contempt and Offence aforesaid; therefore in that there is manifest Error: There is also Error in this, to wit, that where by the Record aforesaid it appears that Judgment upon the said Indictment was given against him the said *Samuel Saintbill* in Form aforesaid, that Judgment by the Law of the Land of this Realm of *England* ought to be given for the same *Samuel Saintbill*, to wit, that he be thereof acquitted, and go thereupon without Day: Therefore in that there is also manifest Error. And the said *Samuel Saintbill* prays that the Judgment aforesaid for these Errors, and others, being in the Record aforesaid, may be reversed and annulled, and wholly had for nothing; and that he may be restored to the Common Law of this Realm of *England*, and to all Things which he hath lost by Occasion of the Judgment aforesaid.

Fine 10 l.

Error assigned.

Pleas before our Lady the Queen at Westminster of the Term of the Holy Trinity in the fourth Year of the Reign of Ann Queen of England, &c.

Bond against Barnes. 2 Ld. Raym. 1205.

London, (to wit) **B**E it remembered, that heretofore, to wit, in the Term of *Easter* last past, before the Lady the Queen at *Westminster*, came *William Bond* by *William Smyth* his Attorney, and brought here into the Court of the said Lady the Queen then there his certain Bill against *Edward Barnes*, in the Custody of the Marshal, &c. of a Plea of Trespass upon the Case; and there are Pledges of prosecuting, to wit, *John Doe* and *Richard Roe*; which said Bill follows in these Words, to wit, *London*, to wit, *William Bond* complains of *Edward Barnes*, in the Custody of the Marshal of the *Marshall's* of the Lady the Queen, being before the Queen herself, for that, (to wit) That whereas the said *Edward* on the 2d Day of *April* in the 4th Year of the Reign of the Lady *Ann*, now Queen of *England*, &c. at *London* aforesaid, to wit, in the Parish of the *Blessed Mary of the Arches* in the Ward of *Cheape*, was indebted to the said *William Bond* in one hundred Pounds of lawful Money of *England*, for the like Sum of Money of him the said *William*, by him the said *William*, at the special Instance and Request of him the said *Edward*, to him the said *Edward* before that Time lent and advanced; and being thereof so indebted, he the said *Edward*, in Consideration thereof afterwards, to wit, the same Day and Year aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, assumed upon himself, and to the said *William Bond* then and there faithfully promised, that he the said *Edward* the said one hundred Pounds to to the same *William*, when he should be thereunto afterward requested, would well and faithfully pay and satisfy. And also whereas afterwards, to wit, the same Day and Year last aforesaid, at *London* aforesaid in the Parish and Ward aforesaid, the said *Edward* was likewise indebted to the said *William Bond* in other one other hundred Pounds of the like Money of *England* aforesaid, for so much other Money of him the said *William* by the said *Edward*, for and to the Use of him the said *William*, before that Time had and received; and being thereof so indebted, he the said *Edward* in Consideration thereof afterward, to wit, the same Day and Year last aforesaid, at *London* aforesaid in the

the Parish and Ward aforesaid, assumed upon himself, and to the said *William Bond* then and there faithfully promised that he the said *Edward* the said one hundred Pounds last mentioned to the said *William Bond*, when he should be thereunto afterward requested, would well and faithfully pay and satisfy: Nevertheless the said *Edward* his said several Promises and Undertakings in Form aforesaid made not at all regarding, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the same *William Bond* in this Behalf, the said several Sums of Money, or any Part thereof, to the said *William* hath not yet paid, nor hath hitherto in any Manner satisfied him for the same, although to do this be the said *Edward* afterwards, to wit, the same Day and Year last aforesaid, at *London* aforesaid in the Parish and Ward aforesaid, was requested by him the said *William Bond*; whereupon the same *William* saith that he is injured, and hath sustained Damage to the Value of one hundred Pounds; and thereupon he brings Suit, &c.

And now here at this Day, to wit, *Friday* next after the Special Im-Morrow of the holy *Trinity* in this same Term, until parlance. which Day the said *Edward* (saving to himself all and all Manner of Exceptions as to the Bill aforesaid) had leave to impart to the said Bill, and then to answer, &c. before the Lady the Queen at *Westminster* come as well the said *William Bond* by his Attorney aforesaid, as the said *Edward Barnes* by *John Greene* his Attorney; and the said *Edward* defends the Force and Injury, &c. and prays Judgment of the Declaration aforesaid, because he says that the said *William Bond* heretofore, that is to say, after the said 2d Day of *April* in the 4th Year of the Reign of the said Lady *Ann*, now Queen of *England*, &c. to wit, on the 22d Day of *May* in the Term of *Easter* last past in the Court of the said Lady the Queen of the Bench at *Westminster* in the County of *Middlesex*, impleaded him the said *Edward* of the said one hundred Pounds; and the same *Edward* in the same Court of the Lady the Queen of the Bench, before the Justices of the same Court appearing by *Edward Hale* his then Attorney, the said *William Bond* by *Stephen Hales* his then Attorney in the same Court declared against him the said *Edward Barnes*, for that, to wit, that whereas the said *Edward Barnes* on the second Day of *April* in the 4th Year of the Reign of the Lady *Ann*, now Queen of *England*, &c. at *London* aforesaid, to wit, in the Parish of the *Blessed Mary of the Arches* in the Ward of *Cheape*, was indebted to the said *William* in one hundred

Pleads another
Action pend-
ing for the
same Debt.

PLEADINGS TO THE CASES.

Pounds of lawful Money of *England*, for the like Sum of Money of him the said *William*, by him the said *William*, at the special Instance and Request of him the said *Edward*, to him the said *Edward* before that Time lent and advanced; and being thereof so indebted, he the said *Edward*, in Consideration thereof afterwards, to wit, the same Day and Year abovesaid, at *London* abovesaid, in the Parish and Ward abovesaid, assumed upon himself, and to the said *William Bond* then and there faithfully promised that he the said *Edward*, the said one hundred Pounds, to the same *William*, when he should be thereunto afterward requested, would well and faithfully pay and satisfy. And also whereas afterwards, to wit, the same Day and Year last abovesaid, at *London* abovesaid in the Parish and Ward abovesaid, the said *Edward* was likewise indebted to the said *William Bond* in other one hundred Pounds of the like Money of *England* abovesaid, for so much other Money of him the said *William* by the said *Edward*, for and to the Use of him the said *William*, before that Time had and received; and being thereof so indebted, he the said *Edward* in Consideration thereof afterward, to wit, the same Day and Year last abovesaid, at *London* abovesaid in the Parish and Ward abovesaid, assumed upon himself, and to the said *William Bond* then and there faithfully promised that he the said *Edward* the said one hundred Pounds last mentioned to the said *William Bond*, when he should be thereunto afterward requested, would well and faithfully pay and satisfy: Nevertheless the said *Edward* his said several Promises and Undertakings in Form abovesaid made not at all regarding, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the same *William Bond* in this Behalf, the said several Sums of Money, or any Part thereof, to the said *William* had not then paid, nor had then in any Manner satisfied him for the same, although to do this he the said *Edward* afterwards, to wit, the same Day and Year last abovesaid, at *London* abovesaid in the Parish and Ward abovesaid, was requested by him the said *William Bond*; whereupon the same *William* said that he was injured, and sustained Damage to the Value of one hundred Pounds; and thereupon he then brought Suit, &c. as by the Record thereof in the said Court of the said Lady the Queen of the Bench at *Westminster* in the County of *Middlesex* abovesaid remaining not discontinued or determined, more fully appears: And this he is ready to verify by the Record thereof, as the Court shall consider: Whereupon he prays Judgment of the Declaration abovesaid now here pending

pending in Court for the same Cause, and that the said Declaration may be quashed, &c.

And the said *William Bond* saith, that he by any Thing Demurrer. by the said *Edward* above in pleading alledged ought not to be barred from having his said Action thereof against the said *Edward*, because he saith, that the said Plea by the said *Edward* in Manner and Form aforesaid above pleaded, and the Matter in the same contained, are not sufficient in Law to bar him the said *William* from having his said Action thereof against the said *Edward*, to which he the said *William* hath no Necessity, neither is he bound by the Law of the Land in any Manner to answer; and this he is ready to verify: Wherefore for want of a sufficient Plea in this Behalf, he the said *William Bond* prays Judgment and his Damages by Occasion of the Premises aforesaid, to be adjudged to him, &c.

And the said *Edward* saith, that the Plea aforesaid by Joinder in him the said *Edward* in Manner and Form aforesaid above Demurrer. pleaded, and the Matter in the same contained, are good and sufficient in Law to bar him the said *William* from having his said Action against him the said *Edward*; which said Plea, and the Matter in the same contained, he the said *Edward* is ready to verify and prove, as the Court, &c. And because the said *William* to that Plea hath not answered, nor hath hitherto in any Manner denied the same, he the said *Edward* as before prays Judgment, and that the said *William* may be barred from having his said Action thereof against him the said *Edward*, &c. But because the Court of the said Lady the Queen now here is not yet advised of giving their Judgment of and concerning the Premises, Day thereupon is given to the Parties aforesaid before the Lady the Queen at *Westminster*, until——— next after——— to hear their Judgment of and concerning the Premises, for that the Court of the said Lady the Queen now here are not yet thereof, &c.

Pleas before our Lady the Queen at Westminster of the Term of the Holy Trinity in the fourth Year of the Reign of the Lady Ann, now Queen of England, &c.

Wallis against Lewis. 2 *Ld. Raym.* 1215.

London, (to wit) **B**E it remembred, that heretofore, to wit, in the Term of *Easter* last past, without any before the Lady the Queen at *Westminster*, came *Elizabeth profert* of the *Wallis*, Widow, Executrix of the last Will and Testament Letters Testa- of mentary.

Action by an Executrix for Monies of the Testator received (by Defendant) after his Death to the Plaintiff's Use as Executor, without any profert of the Letters Testamentary.

PLEADINGS TO THE CASES.

of *Edward Wallis* her late Husband, deceased, by *Richard Ashe* her Attorney, and brought here into the Court of the said Lady the Queen then there her certain Bill against *Thomas Lewis*, in the Custody of the Marshal, &c. of a Plea of Trespass upon the Case; and there are Pledges of prosecuting, to wit, *John Doe* and *Richard Roe*; which said Bill follows in these Words, to wit, *London*, (to wit) *Elizabeth Wallis*, Widow, Executrix of the last Will and Testament of *Edward Wallis* her late Husband, deceased, complains of *Thomas Lewis*, in the Custody of the Marshal of the *Marshalsea* of the Lady the Queen, being before the Queen herself, for that, (to wit) That whereas the said *Thomas* on the first Day of *March* in the Year of our Lord 1704, at *London* aforesaid, in the Parish of the *Blessed Mary of the Arches* in the Ward of *Cheape*, was indebted to the said *Elizabeth* in fifty Pounds and eight Shillings of lawful Money of *England*, for divers Sums of Money by the said *Thomas* to the Use of her the said *Elizabeth*, as Executrix of the aforesaid *Edward*, by the said *Thomas* before that Time had and received; and being thereof so indebted, he the said *Thomas*, in Consideration thereof afterward, to wit, the same Day and Year aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, assumed upon himself, and to the same *Elizabeth* then and there faithfully promised that he the said *Thomas* the said fifty Pounds and eight Shillings to the said *Elizabeth*, when he should be thereunto afterward requested, would well and faithfully pay and satisfy. And also whereas afterward, to wit, the same Day and Year aforesaid, at *London* aforesaid in the Parish and Ward aforesaid, the said *Thomas* was indebted to the said *Elizabeth* in other fifty Pounds and eight Shillings of like lawful Money of *England*, for Money by him the said *Thomas*, to the Use of her the said *Elizabeth*, as Executrix of the said *Edward*, before that Time had and received; and being so indebted, he the said *Thomas*, in Consideration thereof afterward, to wit, the same Day and Year last mentioned, at *London* aforesaid in the Parish and Ward aforesaid, assumed upon himself, and to the said *Elizabeth* then and there faithfully promised, that he the said *Thomas* the said fifty Pounds and eight Shillings last mentioned, to the said *Elizabeth*, when he should be thereunto afterward requested, would well and faithfully pay and satisfy: Nevertheless the said *Thomas*, his several Promises and Undertakings aforesaid in Manner aforesaid made, not at all regarding, but contriving and fraudulently intending, craftily and subtilly, to deceive and defraud the said

Elizabeth

Elizabeth in this Behalf, the said several Sums of Money, or any Part thereof, to the said *Elizabeth* hath not paid, or in any Manner satisfied her for the same, although to do this, the said *Thomas* afterward, to wit, the 20th Day of *March* in the fourth Year abovesaid, at *London* aforesaid in the Parish and Ward aforesaid was requested by the said *Elizabeth*, but the same to pay to her he hath hitherto absolutely refused, and yet doth refuse, to the Damage of her the said *Elizabeth* of one hundred Pounds; and thereupon she brings Suit, &c.

And now here at this Day, to wit, *Friday* next after the Morrow of the Holy *Trinity* in this same Term, until which Day the said *Thomas* (saving to himself all and all Manner of Exceptions as to the Bill aforesaid) had leave to imparl to the said Bill, and then to answer, &c. before the Lady the Queen at *Westminster* come as well the said *Elizabeth* by her Attorney aforesaid, as the said *Thomas* by *Joseph Taylor* his Attorney; and the said *Thomas* defends the Force and Injury, &c. and says, that he the said *Thomas* ought not to be compelled to answer to the said Bill of the said *Elizabeth*, because he says, that the said *Elizabeth* Plea, another heretofore, to wit, in the Term of Saint *Hilary* last past Action pending in the Court of the Lady the Queen of the Bench at *Westminster*, before the Justices of the said Lady the Queen of the Bench there, impleaded the said *Thomas* in a certain Plea of *Trespas* upon the Case, and for the same Cause in the Declaration aforesaid abovementioned, as by the Record thereof in the same Court remaining appears; and that the Parties aforesaid, to and in the Plea aforesaid in the said Court of the Bench, and the said *Elizabeth* the now Plaintiff, and the said *Thomas*, are the same Persons, and not others, nor different, and that the Plea aforesaid in the said Court of the Bench yet remains undetermined; and this he is ready to verify: Wherefore he prays Judgment if he ought to be compelled to answer to the Bill aforesaid, &c.

And the said *Elizabeth* saith, that by any Thing by the said *Thomas* above in pleading alledged, the said *Thomas* ought to be compelled to answer to the said Bill of her the said *Elizabeth*, because she says that there is not any such Record of the Plea aforesaid had in the said Court of the said Lady the Queen of the Bench at *Westminster* aforesaid existing, as the said *Thomas* above in pleading hath alledged; and this she is ready to verify: Whereupon she prays Judgment, and that the said *Thomas* may answer to the said Bill of her the said *Elizabeth*, &c.

And

Demurrer.

And the said *Thomas* saith, that the Plea aforesaid by the said *Elizabeth* in Manner and Form aforesaid above pleaded in reply, and the Matter in the same contained, are not sufficient in Law to compel him the said *Thomas* to answer to the Bill of her the said *Elizabeth* aforesaid; and that he to that Plea in Manner and Form aforesaid above pleaded hath no Necessity, neither is he bound by the Law of the Land in any Manner to answer; and this he is ready to verify: Wherefore for want of a sufficient Replication of her the said *Elizabeth* in this Behalf, he the said *Thomas* as before prays Judgment, and that the said *Elizabeth* may thereupon be barred from having an Answer to her said Bill against him the said *Thomas*, &c.

Joinder in Demurrer.

And the said *Elizabeth* saith, that the Plea aforesaid by her the said *Elizabeth* in Manner and Form aforesaid above pleaded in reply, and the Matter in the same contained, are good and sufficient in Law to compel him the said *Thomas* to answer to the Bill of her the said *Elizabeth* aforesaid; which said Plea, and the Matter in the same contained, she the said *Elizabeth* is ready to verify and prove, as the Court, &c. And because the said *Thomas* to that Plea hath not answered, nor the same hath hitherto in any Manner denied, she the said *Elizabeth* prays Judgment, and that the said *Thomas* may answer over to the Bill of her the said *Elizabeth*, or for want thereof, that her Damages, by Occasion of the Premises, may be adjudged to her, &c. But because the Court of the said Lady the Queen now here is not yet advised to give their Judgment of and concerning the Premises, Day thereupon is given to the Parties aforesaid before the Lady the Queen at *Westminster*, until——next after——to hear their Judgment of and concerning the Premises, for that the Court of the said Lady the Queen now here are not yet thereof, &c.

Pleas before our Lady the Queen at Westminster of the Term of the Holy Trinity in the fourth Year of the Reign of Lady Ann, Queen of England, &c.

The Queen against Highmore. 2 Ld. Raym. 1220.

Conviction
for a Cheat in
the Measure
of Coals.

London, (to wit) **T**HE Lady the Queen hath sent to Owen Buckingham, Knt. Mayor of the City of London, and Richard Levett, Knt. two of the Keepers of her Peace and her Justices, assigned to keep her Peace in the City aforesaid, and also to hear and determine divers Felonies, Trespasses, and other Misdemeanors committed

mitted within the same City, her Writ close in these Words,
Jf. Ann, by the Grace of God, of *England, Scotland, France*
 and *Ireland* Queen, Defender of the Faith, &c. To
Owen Buckingham, Knt. Mayor of the City of *London*, and
Richard Levett, Knt. two of the Keepers of our Peace and
 our Justices, assigned to hear and determine divers Felonies,
 Trespasses, and other Misdemeanors committed within our
 City of *London*, and to every of them, greeting : We wil-
 ling for certain Causes, that all and singular Records of
 Conviction of whatsoever Trespasses and Contempts against
 the Form of the statute, intituled, An Act for regulating
 the Measures and Prices of Coals set forth, whereupon
Edward Higmore is convicted (as it is said) be sent by you
 before us, command you, that you send, or one of you
 send, all and singular the Records of Conviction aforesaid,
 with all Things touching them, by whatsoever Name the
 said *Edward Higmore* may be named in the same, before
 us, under your Seals, or the Seal of one of you, from the
 Day of the Holy *Trinity* in three Weeks, wheresoever we
 shall then be in *England*, together with this Writ, that we
 may further do thereupon, that which of Right and ac-
 cording to the Law and Custom of our Realm of *England*
 we shall see to be done. Witness *J. Holt*, Knt. at *West-*
minster the 8th Day of *June* in the 4th Year of our Reign.
 At which said three Weeks of the Holy *Trinity*, before the
 said Lady the Queen at *Westminster*, *Owen Buckingham*,
 Knt. Mayor of the City of *London*, and *Richard Levett*,
 Knt. two of the Justices of the Peace in the said Writ
 named, returned the Writ aforesaid, and sent the Record in
 the same Writ mentioned, in these Words :

London, (to wit) **B**E it remembered, that on the 16th
 Day of *May* in the 4th Year of the
 Reign of our Lady *Ann*, by the Grace of God, of *England*,
Scotland, France and *Ireland* Queen, Defender of the
 Faith, &c. one *Margaret Walker* of the Parish of Saint
Faith the Virgin in the Ward of *Baynard's Castle* within
 the City of *London*, aforesaid, Widow, at the Parish and
 Ward aforesaid, came before us *Owen Buckingham*, Knt.
 Mayor of the City of *London* aforesaid, and *Richard Levett*,
 Knt. one of the Aldermen of the City aforesaid, then be-
 ing two Justices of the said Lady the now Queen, assign-
 ed to keep the Peace for the City aforesaid, and then and
 there the said *Margaret* complained and informed us the said
 Justices, that one *Edward Higmore* of the Parish of Saint
Peter Paul's Wharfe in the Ward of *Queenhithe*, *London*,
 Woodmenger,

Certiorari to
 remove the
 Conviction to
 B. R.

To have made the Conviction good these Words ought to have been inserted,

* "At London aforesaid in the Parish and Ward aforesaid."

Woodmonger, on the seventh Day of *July* last past * exposed to Sale, and actually sold and delivered to the aforesaid *Margaret Walker* a certain Quantity of Sea-Coals, (imported into the River of *Thames*) for so much as, and instead of seven Chaldrons of Sea-Coals, at the Rate or Price of thirty-four Shillings, to be paid for every Chaldron thereof; and that for, and instead of the full and due Quantity and Measure of seven Chaldrons (of which every Chaldron ought to contain thirty-six Bushels heaped up, according to the Bushel for that Purpose sealed, kept at *Guibald* in *London*) the said Quantity of Coals so sold and delivered as aforesaid, fell short and wanted twenty-six Bushels of the full and due Measure of seven Chaldrons, computing thirty and six Bushels heaped up, according to the Bushel for that Purpose sealed, kept at *Guibald, London*, aforesaid, against the Form and Effect of the Statute in that Case lately made and provided; upon which said Complaint and Information of the said *Margaret Walker*, we the said *Owen Buckingham*, Mayor of the City aforesaid, and *Richard Levett*, one of the Aldermen of the same City, and then two Justices of the said Lady the now Queen, assigned to keep the Peace for and within the City aforesaid, on the said 16th Day of *May* in the above said fourth Year of the Reign of the said Lady the now Queen, at the Parish and Ward aforesaid, the said *Margaret* and *Edward* being convened and called before us, and having heard and examined the Complaint aforesaid, in the Presence of him the said *Edward Higbmore*, by and upon the several Oaths of *Ralph Walker*, *Richard Newman*, *Robert Hayes*, *Thomas Duncce*, *Joseph Vickers* and *Francis Griffin*, sufficient and credible Witnesses, before us the said Justices, for that Cause then and there sworn upon the Holy Evangelists of God, it is manifestly proved to us the said Justices, that the said Quantity of Sea-Coals so as aforesaid sold and delivered to the said *Margaret Walker* by the said *Edward Higbmore*, at the Time of the Sale and Delivery thereof did fall short and wanted twenty-six Bushels of seven Chaldrons of thirty and six Bushels heaped up, according to the Bushel for that Purpose sealed, kept at *Guibald, London*, aforesaid, to be computed, to make up every Chaldron: And having fully heard and considered the Allegations of the said *Edward Higbmore* to the Matter of the said Complaint; therefore we the said Justices adjudge him the said *Edward Higbmore* guilty of the Sale and Delivery of six Chaldrons and ten Bushels of Sea-Coals to the said *Margaret Walker*, for and instead of seven Chaldrons of

such

such Coals *, against the Form and Effect of the Statute * “ To wit, aforesaid. And we the said Justices do further adjudge, at *London* aforesaid in the Parish and Ward aforesaid. that the said *Edward Highbore*, by Occasion of the Premises, doth forfeit the said Quantity of Sea-Coals by him so as aforesaid sold and delivered, and also the Sum of twenty and one Pounds six Shillings and ten Pence and a Halfpenny, being the double Value thereof, and that one Moiety of the Coals and Money so as aforesaid forfeited, shall be paid and delivered to the said *Margaret Walker*, the Party prosecuting in this Behalf; and the other Moiety thereof shall be delivered to the Overseers of the Poor of the said Parish of *Saint Faith the Virgin*, now united to the Parish of *Saint Augustine, London*, to the Use of the Poor of the Parish. Given under our Hands and Seals at *London* the Day and Year first aforesaid.

N. B. This Conviction was quashed, because it doth not shew that the Coals were sold in the City of *London*, or within the Liberties thereof. See the Report.

Pleas at Westminster before our Lady the Queen of the Term of the Holy Trinity in the fourth Year of the Reign of Lady Ann, Queen of England, &c.

The Queen against Atkinson and another. 2 *Ld. Raym.*
1248.

Borough of *Leeds*, (to wit) **H**eretofore, that is to say, Indictment against the Collectors of a Tax for falsely extorting Money under Colour of their Office. on the 10th Day of *January* in the 3d Year of the Reign of our Lady *Ann*, by the Grace of God, Queen of *England, &c.* at the General Quarter-Session of the Peace of the Lady the Queen, holden at *Leeds* for the Borough aforesaid, before *Edmund Barker*, Esq; Mayor, *Jasper Blythman*, Esq; Recorder, *Thomas Dixon*, *William Rooke* and others their Fellows, Aldermen and Justices of the said Lady the Queen, assigned to keep the Peace within the Borough aforesaid, and also to hear and determine divers Felonies, Trespasses, and other Misdemeanors committed and done in the same Borough, and from thence continued and holden by Adjournment at *Leeds* aforesaid for the Borough aforesaid, on the 14th Day of *February* in the Year aforesaid, before the said *Edmund Barker*, Mayor, *Jasper Blythman*, Recorder, and *William Rooke*, and before *Thomas Kitchingman*, *John Dodgson* and others their Fellows, Justices of the said Lady the Queen as aforesaid, assigned to keep the Peace within the Borough aforesaid,

PLEADINGS TO THE CASES.

said, by the Oath of twelve Jurors, of good and lawful Men of the Borough aforesaid, impanelled, sworn and charged to inquire for the said Lady the Queen, for the body of the Borough aforesaid, it was presented, That whereas on the 24th Day of *March* in the 2d Year of the Reign of our Lady *Ann*, by the Grace of God, now Queen of *England*, &c. *John Atkinson* late of *Leeds* in the Borough aforesaid, Linendraper, and *William Barstow* late of *Leeds* aforesaid in the Borough aforesaid, Grocer, then being Collectors of several Sums assessed upon the Inhabitants of a certain Liberty, called *Leeds Upper Division* within the Borough aforesaid, mentioned and expressed in a certain Assessment made and confirmed in Pursuance of a certain Act of Parliament made in the first Year of the Reign of our said Lady the now Queen of *England*, &c. intituled, An Act for granting an Aid to her Majesty by divers Subsidies and a Land-tax, the said *John Atkinson* and *William Barstow* on the said 24th Day of *March* in the abovesaid 2d Year of the Reign of the said Lady the now Queen at *Leeds* aforesaid in the Borough aforesaid, by Colour of the Office aforesaid, unlawfully, extorsively and deceitfully, and of their own Wrong, exacted, received and had of one *Thomas Calverly*, then of *Leeds* aforesaid in the Borough aforesaid (being not assessed at all by Virtue of the Act of Parliament aforesaid) the Sum of four Shillings, and that the said *John Atkinson* and *William Barstow* the same Sum of four Shillings so as aforesaid of the said *Thomas Calverly* unlawfully, extorsively and deceitfully exacted, received and had, and to the proper Use of them the said *John Atkinson* and *William Barstow* then and there unlawfully, injuriously and deceitfully converted, to the great Damage of him the said *Thomas Calverly*, to the evil Example of all other Delinquents in such Case, and against the Peace of the said Lady the now Queen, her Crown and Dignity; which said Indictment the said Lady the now Queen afterwards for certain Causes made to come to be determined before her by which the Sheriff of the County of *York* is commanded, that he do not omit, &c. but that he cause them to come to answer, &c. And now, to wit, on *Friday* next after the Morrow of the Holy *Trinity* in this same Term before the Lady the Queen at *Westminster*, come the said *John Atkinson* and *William Barstow* by *Francis Pember* their Attorney, and having severally heard the Indictment aforesaid say, that they do not apprehend that the said Lady the now Queen will or ought any further to impeach or trouble them the said *John* and *William* for the Premises, be-
cause

Demurrer.

cause they say that the said Indictment, and the Matter in the same contained, are not sufficient in Law, to which they have no Necessity, neither are they bound by the Law of the Land in any Manner to answer, and for the Insufficiency thereof pray Judgment, and that they may be dismissed of the Premises by the Court here, &c. And *Simon Harcourt*, Esq; Coroner and Attorney of the said Lady the Queen, in the Court of the said Queen, before the Queen herself, who prosecutes for the said Lady the Queen in this Behalf, saith, that the Indictment aforesaid, and the Joinder: Matter in the same contained, are good and sufficient in Law to compel the said *John Atkinson* and *William Barstow* to answer to the same Indictment; which said Indictment, and the Matter in the same contained, the said Coroner and Attorney of the said Lady the Queen for the said Lady the Queen is ready to verify and prove, as the Court, &c. Wherefore since the said *John Atkinson* and *William Barstow* have not answered to the said Indictment, nor deny the Matter in the same contained, the said Coroner and Attorney of the said Lady the Queen, for the said Lady the Queen, prays Judgment, and that the said *John Atkinson* and *William Barstow* may be convicted of the Premises in the said Indictment above laid to their Charge, &c.

Pleas before the Lady the Queen at Westminster of the Term of Saint Michael in the eleventh Year of the Reign of our Lady Ann, Queen of Great Britain, &c. Roll 224.

Smith against Boheme and others. 2 Ld. Raym. 1396. cited.

THE Lady the Queen hath sent to her right trusty and well-beloved *Thomas Lord Trevor*, her Chief Justice of the Bench, her Writ-cloze in these Words: *Ann*, by the Grace of God, of *Great Britain, France and Ireland* Queen, Defender of the Faith, &c. To her right trusty and well-beloved *Thomas Lord Trevor*, her Chief Justice of the Bench, greeting: Forasmuch as in the Record and Process, and also in giving of Judgment in a Plaint which was in our Court before you and your Companions, our Justices of the Bench aforesaid, by our Writ, between *Caleb Smith* and *Samuel Bobeme* late of *London*, Gent. and *Maurice Bobeme* late of *London*, Distiller, of a certain Trespass upon the Case, done to the said *Caleb* by the said *Samuel* and *Maurice*, as it is said, manifest Error hath intervened, to the great Damage of the said *Samuel* and *Maurice*, as

Action on the Case on a special Promise.

F by

PLEADINGS TO THE CASES.

by their Complaint we are informed: We willing that the said Error, if any be, be duly amended, and full and speedy Justice done to the said Parties in this Behalf, do command you, that if Judgment be given thereupon, then you send to us distinctly and plainly under your Seal the Record and Process aforesaid, with all Things touching the same, and this Writ, so that we may have them on the Octave of the Holy Trinity, wheresoever we shall then be in England, that inspecting the Record and Process aforesaid, we may cause further to be done thereupon for amending the said Error, as of Right and according to the Law and Custom of England shall be meet to be done. Witness ourself at Westminster the fourth Day of June in the eleventh Year of our Reign.

Layton.

Which said Writ is thus returned: The Answer of Thomas Lord Trevor, the Chief Justice within named.

The Record and Process of the Plaint, whereof Mention is within made, with all Things touching the same, I send before the Lady the Queen wheresoever, &c. at the Day within contained, in a certain Record to this Writ annexed, as I am within commanded.

Trevor.

Pleas inrolled at Westminster before Thomas Lord Trevor, Baron of Bromham, and his Companions, Justices of the Lady the Queen of the Bench of the Term of Saint Hilary in the tenth Year of the Reign of the Lady Ann, by the Grace of God, of Great Britain, &c. Queen, Defender of the Faith, &c. Roll 400.

Action upon a London, (to wit) **S**AMUEL Bobeme late of London, Special Promise to pay Gent. and Maurice Bobeme late, of Plaintiff a London, Silversmith, were attached to answer Caleb Smith Sum of Money, or to of a Plea of Trespass upon the Case, &c. And whereupon render the the said Caleb by Richard Humfreys his Attorney complains, Body of S. B. that whereas one Samuel Bobeme the younger on the tenth to Prison. Day of August in the Year of our Lord 1711, at London, That one S. B. was indebted to Caleb in seventy-one Pounds twelve Shillings and ten Pence, Plaintiff in for divers Goods, Wares and Merchandizes to the said Samuel Bobeme the younger before that Time by the said

71 l. 12 s.
10 d.

said *Caleb* sold and delivered ; and the said *Samuel Bobeme* the younger being so indebted to the said *Caleb*, he the said *Caleb*, for the better and speedier obtaining and recovery of that Debt afterward, to wit, on the 26th Day of *September* in the Year above said, the said *Caleb* levied his certain Plaint against the said *Samuel Bobeme* the younger, by the Name of *Samuel Bobeame*, in the Court of the Lady the now Queen of Record, holden before *George Thorold*, Knight and Baronet, one of the late Sheriffs of the City of *London*, in his Counter in the *Poultry*, in the Parish and Ward above said, in a Plea of Trespass upon the Case, to the Damage of him the said *Caleb* of one hundred and fifty Pounds, according to the Custom of the City of *London* above said, and then and there, according to the Custom of that City, at the Petition of him the said *Caleb*, by the said Court it was by word of Mouth commanded to *John Russell*, one of the Serjeants at Mace of the said late Sheriff, and a Minister of the Court above said, that he, according to the Custom of the Court above said, should take and arrest the said *Samuel Bobeme* the younger, by the name of *Samuel Bobeame*, by his Body, and keep him safely, so that he might have his Body at the said Court of the said Lady the Queen, to wit, on the 27th Day of the same Month of *September* in the Year above said, before the said late Sheriff, holden in his Counter above said, to answer the said *Caleb* in the Plea of his Plaint above said, according to the Custom of the City above said ; by Virtue of which said precept, and before the said 27th Day of *September* in the Year above said, the said *John Russell*, the said Serjeant at Mace of the said late Sheriff, took and arrested the said *Samuel Bobeme* the younger, by the Name of *Samuel Bobeame*, by his Body, and had him the said *Samuel Bobeme* in his Custody for the Cause above said ; and the said *Samuel Bobeme* being so arrested and in Custody, they the said *Samuel Bobeme* the now Defendant, and *Maurice*, had Notice thereof ; and afterwards, to wit, on the 26th Day of *September* in the Year above said, at *London* above said in the Parish and Ward above said, they the said *Samuel Bobeme* the now Defendant, and *Maurice Bobeme*, in Consideration that at the said *Caleb*, at the special Instance and Request of the said *Samuel* the now Defendant, and *Maurice*, would discharge the said *Samuel Bobeme* the younger, by the Name of *Samuel Bobeame*, out of the Custody of the said *John Russell*, the said Serjeant at Mace of the said Sheriff, upon themselves, and to the said *Caleb* then and there jointly and severally faithfully promised to pay to the said

for which he
in the She-
riffs Court of
London.

And *S. B.* being in Custody of the Serjeant at Mace, the Defendants in Consideration that Plaintiff would discharge him, the Money, or Render his Body to the Serjeant at Mace.

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Breach.

Another
Count on the
Note.

Caleb Smith, or to his Order upon Demand, 71 *l.* 12 *s.* 10 *d.* for Value received, or surrender the Body of him the said *Samuel Bobeme* the younger, to the Custody of the said *John Russell*, Serjeant at Mace of the said late Sheriff, to the Action so brought by the said *Caleb Smith* against him. And the said *Caleb* in Fact saith, that he the said *Caleb* giving Credit to the said Promises and Undertakings of the said *Samuel* the now Defendant, and *Maurice*, at the aforesaid Instance and Request of them the said *Samuel* the now Defendant, and *Maurice*, did then and there discharge the said Body of him the said *Samuel Bobeme* the younger, by the Name of *Samuel Bobeame*, out of the Custody of the said *John Russell*, Serjeant at Mace aforesaid. And afterward, to wit, the same Day and Year last aforesaid, at *London* aforesaid in the Parish and Ward aforesaid, gave Notice thereof to the said *Samuel* the now Defendant, and to the said *Maurice*: Nevertheless the said *Samuel* the now Defendant, and *Maurice*, not at all regarding their said Promises and Undertakings, but contriving and fraudulently intending craftily and subtilly to deceive the said *Caleb* in this Behalf, have not paid, nor hath either of them paid to the said *Caleb* the said 71 *l.* 12 *s.* 10 *d.* nor have they surrendered the Body of the said *Samuel Bobeme* the younger to the Custody of the said Sheriff, or of his Serjeant at Mace aforesaid, in the Action aforesaid, as according to their Promises and Undertakings aforesaid, they the said *Samuel* the now Defendant, and *Maurice*, ought to have done, although by the said *Caleb* afterward, to wit, on the said 27th Day of *September* in the Year aforesaid, they were requested. And also whereas the said *Samuel Bobeme* the now Defendant, and *Maurice*, after the first Day of *May* in the Year of our Lord 1705, to wit, on the 26th Day of *September* in the Year of our Lord 1711, at *London* aforesaid in the Parish and Ward aforesaid, made their certain Note in writing, commonly called a promissory Note, with their own proper Hands subscribed thereunto, bearing Date the Day and Year last aforesaid; by which said Note they the said *Samuel* the now Defendant, and *Maurice*, jointly and severally promised to pay to the said *Caleb Smith*, or Order, upon Demand, 71 *l.* 12 *s.* 10 *d.* for Value received, or surrender the Body of him the said *Samuel Bobeme* the younger to the Action brought by the said Master *Smith* against him; and they the said *Samuel Bobeme* the now Defendant, and *Maurice*, have not surrendered the Body of the said *Samuel Bobeme* the younger, by the

the Name of *Samuel Bobeame*, according to the Tenor of the said Note : And by reason of the Premisses, and also by Force of the Statute in such Case lately made and provided, they the said *Samuel Bobeme* the now Defendant, and *Maurice*, became jointly and severally liable to pay to the said *Caleb* the said Sum of Money, according to the Tenor of the Note aforesaid ; and in Consideration thereof they the said *Samuel Bobeme* the now Defendant, and *Maurice*, afterward, to wit, the first Day of *October* in the Year last aforesaid, at *London* aforesaid in the Parish and Ward aforesaid, assumed upon themselves, and to the said *Caleb Smith* then and there jointly and severally faithfully promised to pay to the said *Caleb Smith* the said 71 l. 12 s. 10 d. according to the Tenor of the said Note : Nevertheless the said *Samuel* the now Defendant, and *Maurice*, their promises and Undertakings last mentioned not at all regarding, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *Caleb* in this Behalf, the Sum of Money last mentioned, or any Part thereof, to the said *Caleb* have not yet paid, nor hath either of them paid, nor have they surrendered, nor hath either of them surrendered the Body of him the said *Samuel Bobeme* the younger, by the Name of *Samuel Bobeame*, to the Action last mentioned, but they have wholly refused, and yet do refuse, to perform the Promises last mentioned in any Manner. And **Second Count** also whereas the said *Samuel Bobeme* the now Defendant, upon a Note and *Maurice*, after the first Day of *May* in the Year of in Writing our Lord 1705, to wit, on the 26th Day of *September* in upon the Statute the Year of our Lord 1711, at *London* aforesaid in the Parish and Ward aforesaid, made their certain Note in writing, commonly called a promissory Note, their own proper Hands being subscribed thereunto, bearing Date the Day and Year last above mentioned, by which said Note they the said *Samuel* the now Defendant, and *Maurice*, jointly and severally promised to pay to the said *Caleb Smith*, or Order, upon Demand, 71 l. 12 s. 10 d. for Value received ; and by reason thereof, and also by Force of the Statute in such Case lately made and provided, they the said *Samuel Bobeme* the now Defendant, and *Maurice*, became jointly and severally liable to pay to the said *Caleb* the same Sum of Money, according to the Tenor of the said Note ; and in Consideration thereof they the said *Samuel Bobeme* the now Defendant, and *Maurice*, afterward, to wit, on the 2d Day of *October* in the Year last aforesaid, at *London* aforesaid in the Parish and Ward aforesaid, assumed upon themselves, and to the said *Caleb* then and there jointly

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jointly and severally faithfully promised to pay to the said *Caleb* the said 71 l. 12 s. 10 d. upon Demand: Nevertheless the said *Samuel Bobeme* the now Defendant, and *Maurice*, not at all regarding their Promises last mentioned to as aforesaid to the said *Caleb* in Form aforesaid made, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *Caleb* in this Behalf, the said last Sum of Money, or any Part thereof, to the said *Caleb* have not yet paid, nor hath either of them paid, or in any Manner contented him for the same, (although to do this the said *Samuel* the now Defendant, and *Maurice*, afterwards, to wit, on the 3d Day of *October* in the Year last aforesaid, at *London* aforesaid in the Parish and Ward aforesaid, by the said *Caleb* have been requested) but to pay the same to him they have wholly refused, and yet do refuse, to the Damage of him the said *Caleb* of eighty Pounds; and thereupon he brings Suits, &c.

General Issue.

And the said *Samuel* and *Maurice* by *Edward Gilbert* their Attorney come and defend the Force and Injury when, &c. and say, that they did not assume upon themselves in Manner and Form as the said *Caleb* above complains against them; and of this they put themselves upon the Country; and the said *Caleb* likewise: Therefore the Sheriff is commanded, that he cause to come here on the Octave of the Purification of the Blessed *Mary* twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. At which Day the Jury between the Parties aforesaid of the Plea aforesaid was respited between them here until this Day, to wit, from *Easter* Day in fifteen Days then next following, unless *Thomas Lord Trevor* Baron of *Brombam*, Chief Justice of the Lady the Queen of the Bench here, assigned by Form of the Statute, &c. on *Thursday* the 14th Day of *February* next, past, at *Guilbald*, *London*, should first come. And now here at this Day cometh the said *Caleb* by his Attorney aforesaid; and the said Chief Justice, before whom, &c. hath sent his Record in these Words: Afterwards at the Day and Place within contained, before *Thomas Lord Trevor*, Baron of *Brombam*, the Chief Justice within written, (*Joseph Houlton*, Gent. being associated unto him by Form of the Statute, &c.) came the within named *Caleb Smith* by his Attorney within contained, and the within named *Samuel Bobeme* and *Maurice Bobeme*, although solemnly called came not, but made Default; therefore the Jury within written was taken against them by Default: And the Jurors of the Jury being called, certain of them,

Nisi prius.

Postea.

PLEADINGS TO THE CASES.

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to wit, *Lancelot Skinner, Edward Bull, John Clement, Nicholas Jarvis* and *Thomas Boucher* came, and are sworn upon that Jury: And because the Rest of the Jurors of the same Jury did not appear, therefore others of the By-standers by the Sheriffs of *London* to this being chosen, at the Request of the said *Caleb Smith*, and by the Command of the Chief Justice aforesaid are newly appointed, whose Names are affixed in the Panel within written, according to the Form of the Statute in such Case made and provided; which said Jurors so newly appointed, to wit, *Edward Skinner, John Meredith, Jonathan Kendall, Francis Ludlam, Benjamin Russell, Downes Ward* and *John Crompton* being called likewise come, who being chosen, tried and sworn to speak the Truth of the Premises within contained, together with the other Jurors aforesaid before impanelled and sworn, as to the first and second Promises and Undertakings in the Declaration within written within mentioned, say upon their Oath, that the said *Samuel Bobeme* and *Maurice Bobeme* assumed upon themselves in Manner and Form as the said *Caleb Smith* within against them complains: And they assess the Damages of him the said *Caleb*, by occasion of the Non-performance of the Promises and Undertakings aforesaid within written, besides his Costs and Charges by him laid out about his Suit in this Behalf to 61 l. 12 s. 10 d. and for those Costs and Charges to fifty-three Shillings and four Pence; and as to the Rest of the Promises and Undertakings in the Declaration aforesaid mentioned, the Jurors aforesaid upon their said Oath say, that the said *Samuel Bobeme* and *Maurice Bobeme* did not assume upon themselves in Manner and Form as they the said *Samuel* and *Maurice* have within by pleading alleged for themselves; therefore it is considered, that the said *Caleb* do recover against the said *Samuel* and *Maurice* his Damages aforesaid to 64 l. 6 s. 2 d. by the Jurors aforesaid in Form aforesaid assessed, and also 21 l. 13 s. 10 d. to the said *Caleb*, at his Request, for his Costs and Charges aforesaid by the Court here by way of Increase adjudged; which said Damages amount in the Whole to 86 l. and the said *Samuel* and *Maurice* thereof in Mercy, &c. And the said *Caleb* likewise in Mercy for his false Claim against the said *Samuel* and *Maurice* as to the Rest of the Promises and Undertakings aforesaid in the Declaration aforesaid likewise mentioned, whereof they the said *Samuel* and *Maurice* by the Jurors aforesaid are above acquitted; and the said *Samuel* and *Maurice* may go thereof without Day, &c.

Tales.

Verdict for Plaintiff as to Part.

For the Defendant as to Part.

Judgment for Plaintiff as to Part.

Defendant in Mercy.

For the Defendant as to Part.

Plaintiff in Mercy.

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Common Errors assigned, That the Declaration is insufficient, and that the Judgment is for the Plaintiff where it ought to be for Defendant. No Original, *In nullo est erratum* pleaded.

Pleas before the Lord and Lady the King and Queen at Westminster of the Term of the Holy Trinity in the sixth Year of the Reign of William and Mary, King and Queen of England, &c.

Wilson against Law. 1 Ld. Raym. 20.

Appeal of
Murder.

(* Of it) i. e.
of the Death
of his Brother.

Middlesex, (to wit) JOHN Law late of the Parish of Saint Giles in the Fields in the County aforesaid, Gent. was attached by his Body to answer to Robert Wilson, Gent. the Brother and Heir of Edward Wilson, Gent. concerning the Death of the aforesaid Edward, formerly his Brother, whereof he appealeth him; and there are Pledges of prosecuting, that is to say, Charles Williams of the Parish of Saint James within the Liberty of Westminster in the County aforesaid, Tapestry-maker, and John Wheeler of the Parish of Saint Mary le Savoy in the County aforesaid, Gent. And whereupon the said Robert Wilson, the Brother and Heir of the said Edward Wilson, in his proper Person instantly appealeth the said John Law of it*; that when the aforesaid Edward Wilson was in the Peace of God and of the Lord the now King and of the Lady the now Queen, at the aforesaid Parish of Saint Giles in the Fields in the said County of Middlesex, on the ninth Day of April in the sixth Year of the Reign of the Lord William and Lady Mary, by the Grace of God, of England, Scotland, France and Ireland, King and Queen, Defenders of the Faith, &c. about the first Hour after Mid-day of the same Day came the aforesaid John Law feloniously and as a Felon, of the said Lord the now King and Lady the now Queen, lying in wait, and of his Malice afore-thought, and Assault premeditated, against the Peace of the said Lord the now King and Lady the now Queen, their Crown and Dignity, and in the same Day, Year, Hour and Place, with Force and Arms, &c. feloniously, wilfully, and of his Malice afore-thought made an Assault upon him the said Edward Wilson; and the said John Law then and there with a certain Sword made of Iron and Steel of the Value of five Shillings, which he the said John Law in his Right Hand then and there drew, had and held, then and there violently, feloniously, wilfully,

fully, and of his Malice aforethought, did strike, stab and thrust in, in and upon the upper Part of the Belly of him the said *Edward Wilson*, near the Breast and Middle of the Body of him the said *Edward*, giving to the same *Edward Wilson* then and there with the Sword afore said, in and upon the afore said upper Part of the Belly of him the afore said *Edward Wilson*, near his Breast and Middle of his Body, one mortal Wound of the Breadth of two Inches and of the Depth of five Inches, of which mortal Wound indeed the said *Edward Wilson* then and there instantly died; and so the afore said *John Law* then and there, that is to say, on the said ninth Day of *April* in the sixth Year above said, about the first Hour after Mid-day of the same Day, at the afore said Parish of *Saint Giles in the Fields* in the County of *Middlesex* afore said, in Manner and Form afore said, feloniously, wilfully, and of his Malice aforethought hath slain, killed and murdered the afore said *Edward Wilson*, against the Peace of the said Lord the now King and Lady the now Queen, their Crown and Dignity; and as soon as the same Felon, the said *John Law*, had done the Felony and Murder afore said, he the same *John Law* fled, and the afore said *Robert Wilson*, him the said *John Law* freshly pursued from Vill to Vill unto the four nearest Villis, and further until, &c. And if the said Felon will deny the Felony and Murder afore said laid to him in Form afore said, the said *Robert Wilson* is ready to prove this against him, as the Court, &c.

And the afore said *John Law* in his proper Person comes Defendant and prays Oyer of the Writ of Appeal afore said, and craves Oyer of the Return of the same Writ; and they are read to him the Writ and the Return. in these Words, (to wit) *William and Mary*, by the Grace of God, of *England, Scotland, France and Ireland* King and Queen, Defenders of the Faith, &c. To the Sheriff of *Middlesex*, greeting: Forasmuch as *Robert Wilson*, Gent. Appeal. the Brother and Heir of *Edward Wilson* Gent. hath made you secure of prosecuting his Clamour by *Charles Williams* of the Parish of *Saint James* within the Liberty of *Westminster* in your County, Tapestry-maker, and *John Wheeler* of the Parish of *Saint Mary le Savoy* in your County, Gent. Therefore we command you, that you attach *John Law* late of the Parish of *Saint Giles in the Fields* in your County, Gent. by his Body, according to the Law and Custom of our Kingdom of *England*, so that you may have him before us from the Day of *Easter* in one Month, wheresoever we shall then be in *England*, to answer to the afore said *Robert Wilson* concerning the Death of the said *Edward Wilson*,

PLEADINGS TO THE CASES.

The Return

Wilson, formerly his Brother, whereof he appealeth him ; and have you then there this Writ. Witness ourselves at *Westminster* the 19th Day of *April* in the sixth Year of our Reign. *Martin*. By Virtue of this Writ to me directed I have caused to be attached the within named *John Law*, by his Body, whose Body indeed I have ready before the Lord the King and Lady the Queen, wheresoever, &c. as it is within commanded to me. The Answer of *Thomas Abney*, Knt. and *William Hedges*, Knt. Sheriff ; which being read and heard, the aforesaid *John Law* defends the Force and Injury when, &c. and all the Felony, and whatsoever, &c. and prays Judgment of the original Writ and Declaration aforesaid, because he saith that that Writ,

Demurrer to the Writ and Count.

and the Return thereof, and also the Declaration aforesaid thereupon, are not sufficient in Law to compel him the said *John Law* to answer thereunto ; and that he to the Writ aforesaid as aforesaid returned, or to the Declaration aforesaid as aforesaid declared, hath no Necessity, nor is he bound by the Law of the Land to answer ; and this he is ready to verify : Wherefore he prays Judgment of the Writ and Return, and of the Declaration aforesaid and that the said Writ may be quashed, &c. And as to the Felony and Murder aforesaid, he the said *John Law* saith that he is not guilty thereof, and of Good and Evil he puts himself upon the Country, and the aforesaid *Robert Wilson* likewise, &c.

Not guilty to the Murder.

Issue.

Joinder in Demurrer. to the Writ and Return.

And the aforesaid *Robert Wilson*, as to the aforesaid Plea of the said *John Law* above to the Writ of him the said *Robert Wilson* aforesaid in Form aforesaid pleaded, saith, that the said Writ, and the Return thereof, and the Matter in the same contained, are good and sufficient in Law to compel the said *John Law* to answer thereunto ; and this he is ready to verify : Wherefore since the said *John Law* hath nothing alledged or assigned in which the said Writ, or the Return thereof, is bad, vicious or defective, he the said *Robert Wilson* prays Judgment, and that the same Writ, and the said Return thereof, may be adjudged good and sufficient in Law, &c. And as to the said Demurrer in Law, or Plea of the aforesaid *John Law* to the Declaration of him the said *Robert Wilson* aforesaid above in Form aforesaid pleaded, he the said *Robert Wilson* saith, that the said Declaration, and the Matter in the same contained so as aforesaid declared, are good and sufficient in Law, as well to have and maintain in his Appeal aforesaid against the said *John Law*, as to compel the same *John Law* to answer thereunto ; which Declaration indeed, and the Matter in the same contained, he the said *Robert Wilson* is ready to verify

Joinder in Demurrer as to the Declaration.

verify and prove, as the Court, &c. And because the said *John Law* doth not answer to that Plea, nor hath hitherto in any Manner denied it, he the said *Robert Wilson* prays Judgment, and that the said *John Law* may be convicted of the Felony and Murder aforeaid, &c.

Hartop against Holt. 1 Ld. Raym. 97.

WILLIAM the Third, by the Grace of God, of England, Scotland, France and Ireland King, Defender of the Faith, &c. To our right trusty and well-beloved Sir *John Holt*, Knt. our Chief Justice assigned to hold Pleas in our Court before us, greeting : Whereas in the Statute set forth in the Parliament of Lady *Elizabeth*, late Queen of England, holden at *Westminster* the twenty-third Day of November in the 27th Year of her Reign, it was enacted by the Authority of the same Parliament, that where any Judgment should at any Time thereafter be given in the Court of King's Bench in any Suit or Action of Debt, Detinue, Covenant, Account, Action upon the Case, *Ejectione Firmæ*, or Trespass, first commenced, or to be first commenced there, (other than such only where the said Queen's Majesty should be Party) the Party, Plaintiff or Defendant against whom such Judgment should be given, might at his Election sue forth out of the Court of Chancery a special Writ of Error, to be devised in the said Court of Chancery, directed to the Chief Justice of the said Court of the King's Bench for the Time being, commanding him to cause the said Record, and all Things concerning the said Judgment, to be brought before the Justices of the common Bench and the Barons of the Exchequer into the Exchequer Chamber, there to be examined by the said Justices of the Common Bench and Barons aforeaid; which said Justices of the Common Bench, and such Barons of the Exchequer as are of the Degree of the Coif, or six of them at the least, by Virtue of that Statute should thereupon have full Power and Authority to examine all such Errors as should be assigned or found in or upon any such Judgment, and thereupon to reverse or affirm the said Judgment, as the Law should require, other than for Errors to be assigned or found for or concerning the Jurisdiction of the said Court of King's Bench, or for any want of Form in any Writ, Return, Complaint, Bill, Declaration, or other Pleading, Process, Verdict or Proceeding whatsoever; and after that the Judgment should be affirmed or reversed

A Writ of Error in the Exchequer Chamber, as well on the Judgment as in the awarding Execution.

PLEADINGS TO THE CASES.

versed, the Record, and all Things concerning the same, should be brought back into the said Court of King's Bench, that such further Proceeding should thereupon, as well for Execution as otherwise should appertain, as in the said Statute among other Things, more fully appears : And forasmuch as in the Record and Judgment, and also in the giving of Judgment in a Plaint which was in our Court before us by Bill, between *Thomas Hartop* and *Richard Holt*, otherwise called *Richard Holt* of London, Mercer, as well of a Debt of 335 *l.* which the said *Thomas* demanded of the said *Richard*, as of 43 *s.* for his Damages which he sustained by Occasion of the detaining of that Debt, and also in the awarding of Execution of the Judgment aforesaid, upon our Writ of *Scire facias* issuing out of our same Court for the said *Thomas* against the said *Richard* of the Debt and Damages aforesaid, manifest Error hath intervened, as by the Complaint of the said *Richard* we are informed ; which said Error in no Manner concerneth us or the Jurisdiction of our said Court of King's Bench, or the want of Form in any Writ, Return, Plaint, Bill, Declaration, or other Pleading, Process, Verdict or Proceeding whatsoever, as we are informed : We willing that the said Error, if any be, be corrected, according to the Form of the Statute aforesaid, and full and speedy Justice done to the said Parties in this Behalf, do command you, that if Judgment be given, and an Award of Execution of the same Judgment upon our Writ of *Scire facias* be adjudged, that as well the Record and Proceedings aforesaid, as all Things concerning the same, before the said Justices of the Common Bench and Barons of our Exchequer aforesaid, in the Exchequer Chamber aforesaid, on *Saturday*, to wit, the 2d Day of *May* next coming, you cause to be brought before our said Justices and Barons, that they having examined the Record and Process aforesaid, may cause further to be done thereupon that which of Right and according to the Law and Custom of our Kingdom of *England* shall be meet to be done. Witness ourself at *Westminster* the 12th Day of *February* in the 7th Year of our Reign.

Plea

Pleas before the Lord the King and Lady the Queen at Westminster of the Term of Saint Hilary in the fourth and fifth Years of the Reign of the Lord William and Lady Mary, now King and Queen of England, &c. Roll 272.

Walter against Rumball. 1 *Ld. Raym.* 53.

Southamptonshire, (to wit)

BE it remembred, that heretofore, to wit, on *Saturday* next after eight Days of *Saint Martin* in the Term of *Saint Michael* in the 3d Year of the Reign of the Lord *William* and Lady *Mary*, now King and Queen of *England, &c.* before the said Lord the King and Lady the Queen at *Westminster* came *William Walter Clerk* by *Richard Hill* his Attorney, and brought here into the Court of the said Lord the King and Lady the Queen then there his certain Bill against *Edmund Rumball*, in the Custody of the Marshal, &c. of a Plea of Trespass upon the Case; and there are Pledges of prosecuting, to wit, *John Doe* and *Richard Roe*; which said Bill follows in these Words, (to wit) *Southamptonshire, (to wit) William Walter Clerk* complains of *Edmund Rumball*, in the Custody of the Marshal of the *Marshalsea* of the Lord the King and Lady the Queen, being before the King and Queen themselves, for that (to wit) That whereas the said *William* on the first Day of *November* in the third Year of the Reign of the Lord *William* and Lady *Mary*, now King and Queen of *England, &c.* at *Andover* in the County aforesaid was possessed of the Cattle, Goods and Chattels following, that is to say, of six Swine, twelve Pigs, three Cows, two Bullocks, four Horses, one hundred and two Sheep, of the Price of 100 *l.* of lawful Money of *England*, and of two Stacks of Hay, one Stack of Barley, one Stack of Peas and one Stack of Wheat, to the Value of one other hundred Pounds of lawful Money of *England*, as of his own proper Cattle, Goods and Chattels; and being so possessed thereof, the said *William* afterwards to wit, on the the tenth Day of *November* in the third Year aforesaid, at *Andover* aforesaid in the said County, casually lost the Cattle, Goods and Chattels aforesaid, out of his Hands and Possession; which said Cattle, Goods and Chattels so lost, afterwards in the Day, Year, and at the Place last aforesaid came to the Hands and Possession of him the said *Edmund*, by finding: Nevertheless the said *Edmund* knowing the Cattle, Goods and Chattels aforesaid to be the proper Cattle, Goods and Chattels of him

Trover for
Cattle, Goods
and Chattels.

PLEADINGS TO THE CASES.

him the said *William*, and to him the said *William* of Right to belong and appertain, but contriving and fraudulently intending craftily and ubtily to deceive and defraud him the said *William* in this Behalf, hath not yet delivered the Cattle, Goods and Chattels aforesaid to him the said *William*, (although often requested, &c.) But the said *Edmund* afterwards, to wit, on the twelfth Day of *November* in the third Year aforesaid, at *Andover* aforesaid, converted and disposed of the said Cattle, Goods and Chattels to his own proper Use and Profit; whereupon the said *William* saith that he is injured, and hath Damage to the Value of 200 *l.* and thereupon he brings Suit, &c.

Imparlance.

Not guilty
pleaded.

And now at this Day, to wit, *Monday* next after eight Days of *Saint Hilary* in this same Term, until which Day the said *Edmund* had leave to imparl to the Bill aforesaid, and then to answer, &c. before the Lord the King and Lady the Queen at *Westminster* cometh as well the said *William* by his Attorney aforesaid, as the said *Edmund* by *Henry Curle* his Attorney: And the said *Edmund* defends the Force and Injury when, &c. and saith that he is not guilty thereof; and of this he puts himself upon the Country; and the said *William* thereupon likewise, &c. Therefore let a Jury thereof come before the Lord the King and Lady the Queen at *Westminster* on *Monday* next after eight Days of the Purification of the Blessed Virgin *Mary*, and who neither, &c. to take cognisance, &c. because as well, &c. The same Day is given to the Parties aforesaid there, &c. Afterwards the Process between the Parties aforesaid is thereupon continued of the Plea aforesaid by respiting the Jury thereof between them before the Lord the King and Lady the Queen at *Westminster* until *Wednesday* next after fifteen Days of *Easter* from thence next following, unless the Justices of the Lord the King and Lady the Queen, assigned to take the Assizes in the County aforesaid, shall before come on *Tuesday* the 11th Day of *April* at the Castle of *Winchester* in the County aforesaid, by Form of the Statute, &c. for want of Jurors, &c. At which Day before the Lord the King and Lady the Queen at *Westminster* come the Parties aforesaid by their said Attornies, and the said Justices of the said Lord the King and Lady the Queen, before whom, &c. sent here their Record before them had in these Words, (to wit) Afterwards on the Day and at the Place within contained, before *William Dolben*, Knt. one of the Justices of the Lord the King and Lady the Queen, assigned to hold Pleas before the King and Queen themselves, and *John Powell*, Knt. one of the Justices

Postea.

Justices of the said Lord the King and Lady the Queen of the Bench, Justices of the said Lord the King and Lady the Queen, assigned to take the Assizes in the County of *Southampton*, by Form of the Statute, &c. comes the within named *William Walter Clerk* by his Attorney within contained, and the within named *Edward Rumball*, although solemnly called, did not come, but made Default; therefore the Jury, whereof Mention is within made, is taken against him by Default: And the Jurors of that Jury being called, some of them, to wit, *John Hale*, *Francis Kent* (and eight others) came, and are sworn upon that Jury: And because the Rest of the Jurors of the same Jury did not appear, therefore others of the By-standers, by the Sheriff of the County aforesaid, being chosen for this Purpose, at the Request of him the said *William Walter*, and by the Command of the Justices aforesaid, are newly appointed, whose Names are affixed in the Panel within written, according to the Form of the Statute in such Case lately made and provided; and the Jurors so newly appointed, that is to say, *Richard Haws* and *Joseph Watts* being called likewise come, who being chosen, tried and sworn to speak the Truth concerning the Matters within contained, together with the other Jurors aforesaid, before impanelled and sworn to this Purpose, say upon their Oath, that one *John Smith*, Esq; on the 16th Day of *October* in the 28th Year of the Reign of the Lord *Charles* the Second, late King of *England*, &c. was seised in his Demesne as of Fee of and in one Barn and 200 Acres of Land, with the Appurtenances, lying and being in the Forest of *Chute*, one Part thereof being within the Hundred of *Kinnerley* in the County of *Wilts*, and the other Part thereof within the Hundred of *Andover* without in the County of *Southampton*; and being so seised thereof, afterwards, to wit, on the 17th Day of *October* in that same Year, by his certain Indenture sealed with his Seal, and to the Jury now shewn here in Evidence, bearing Date the same 16th Day of *October*, demised the Tenements aforesaid, with the Appurtenances, to one *William Walter*, the Father of the said *William Walter*, the now Plaintiff, for the Term of twenty-one Years, from thence next following and fully to be compleat and ended; yielding and paying therefore during the same Term to the said *John Smith*, his Heirs and Assigns, the yearly Rent of 43 *l.* and 10 *s.* of lawful Money of *England*, yearly and every Year, at the Feast of the Annunciation of the blessed Virgin *Mary* and Saint *Michael* the Archangel, by equal Portions; and that by Virtue of the said Demise the

Tales de Circumstantibus.

Special Verdict.

Seisin in Fee.

And demised by Indenture.

So

PLEADINGS TO THE CASES.

Lessee entred, and was possessed.

Rent in Arrear.

And Defendant, by Order of the Landlord's Bailiff, (the Landlord being beyond Seas distrained for the Rent Arrear upon the Lands lett in 2 Hundreds.

The Act for Distresses for Rent.

No Replevin sued out.

The 5 Days expired.

The Defendant with a Constable caused the Goods to be appraised,

the said *William Walter* the Father afterwards, to wit, the same Day and Year entred into the said demised Premises, and was Possessed thereof for and during the Term aforesaid, the Reversion thereof to the said *John Smith* then and yet belonging; and that 46 l. and 8 d. of the Rent aforesaid, on the 21st Day of *October* in the Year of our Lord 1691 were in Arrear and unpaid to the said *John Smith*, for which the said *Edmund Rumball* on the said 21st Day of *October*, by the Command and Order of one *Henry Garbons*, then and continually afterwards until this Time being the Bailiff of the said *John Smith*, he the said *John Smith* being then and continually afterwards until this Time in Parts beyond the Seas, distrained the Cattle, Goods and Chattels within specified in the Declaration within written, then being the Cattle, Goods and Chattels of him the said *William Walter* the now Plaintiff, being then levant and couchant upon the said demised Premises, that is to say, one Part thereof upon that Part of the said demised Premises which lies within the said Hundred of *Kinnersley* in the County of *Wilts*, and the other Part thereof upon the other Part of the said demised Premises which lies within the said Hundred of *Andover Witbout* in the County of *Southampton*, for the Rent aforesaid, so being in Arrear; and the same Day and Year gave Notice thereof, and of the Cause of the said Distress, to him the said *William*, according to the Form of the Statute in such Case lately made and provided, intituled, An Act for enabling the Sale of Goods distrained for Rent, in Case the Rent be not paid in a reasonable Time. And the said Jurors upon their Oath aforesaid further say, that at any Time after the Distress aforesaid, the said *William Walter* the now Plaintiff hath not brought or prosecuted any Writ to replevy the Cattle, Goods and Chattels aforesaid, wherefore after five Days had been elapsed and expired after the said Notice to him the said *William*, and before the exhibiting the Bill of him the said *William*, to wit, on the 2d Day of *November* in the Year of our Lord 1691 aforesaid, the said *Edmund Rumball*, together with the Constable of the Hundred of *Kinnersley* aforesaid for the Time then being, caused the Cattle, Goods and Chattels within mentioned in the Declaration aforesaid within the Hundred of *Kinnersley* aforesaid, to be appraised by two Appraisers, sworn within that Hundred to appraise the same truly according to the best of their Understanding, by the Constable of the same Hundred of *Kinnersley*, in the Presence of the Constable of the Hundred of *Andover Witbout* aforesaid:

And

And that after the said Appraisement of the Cattle, Goods and after-
and Chattels aforesaid, and before the Exhibiting the Bill wards sold
of him the said *William Walter*, the said *Edmund Rumball* the Goods.
sold a certain Parcel of the Cattle, Goods and Chattels afore-
said, to certain Persons unknown to the Jurors aforesaid. But the said Jurors upon their said Oath further say, that The Goods
the said Cattle, Goods and Chattels so sold, were not of the not of the
Value of the Rent aforesaid so being in Arrear as aforesaid, Value of the
nor were sold for the Value of that Rent so being in Arrear, Rent.
And the Jurors aforesaid upon their said Oath further say,
that the Cattle, Goods and Chattels aforesaid, were ap-
praised in Manner aforesaid, and not otherwise, or in any
other Manner : And that the said *Edmund Rumball* took And the Rest
and carried away the Rest of the said Cattle, Goods and unfold he
Chattels not sold after the Appraisement aforesaid, to be bath in his
sold when there should be an Opportunity, and yet detains Hands.
in his Custody those Cattle, Goods and Chattels : But whe-
ther upon the whole Matter aforesaid, by the Jurors afore-
said in Manner and Form aforesaid found, the said *Edmund*
Rumball be guilty of the Premisses within laid to his Charge
by the said Declaration, the said Jurors are wholly igno-
rant, and pray thereupon the Advice of the Court of the
Lord the King and Lady the Queen now here : And if
upon the said Matter it shall seem to the Court here that
the said *Edmund Rumball* be guilty of the Premisses within
laid to his Charge by the said Declaration, then the said
Jurors say upon their Oath, that the said *Edmund Rumball*
is guilty thereof, as the said *William Walter* within thereof
complains against him ; and then they assess the Damages
of him the said *William Walter*, by Occasion thereof, be-
sides his Costs and Charges by him laid out about his Suit
in this Behalf, to 86 l. and for those Costs and Charges to
40 s. And if upon the whole Matter aforesaid, by the Ju-
rors aforesaid in Manner and Form aforesaid found, it shall
seem to the Court here that the said *Edmund Rumball* is
not guilty of the Premisses within laid to his Charge by the
Declaration aforesaid, then the said Jurors upon their said
Oath say, that the said *Edmund Rumball* is not guilty of the
Premisses within laid to his Charge by the Declaration
aforesaid, as the said *Edmund Rumball* within in Pleading
thereupon hath alledged. And because, &c.

Dalston, Bart. against Janſon. 1 Ld. Raym. 58.

London, (to wit) *JOHN Dalston*, Knight and Baronet,
complains of *Joſhua Janſon*, a com-
mon Carrier, in Custody of the Marshal of the Marshal-
G sea

PLEADINGS TO THE CASES.

Count against
a common
Carrier.

sea of the Lord the King, being before the King himself, for that, to wit, that whereas the aforesaid *Josbua* on the 16th Day of *March* in the Year of our Lord 1693, and long before and always afterwards hath been, and now is, a common Carrier of Goods and Chattels, and for his Profit hath been accustomed to carry the Goods and Chattels of all Persons whatsoever requiring the Carriage thereof from *Wakefield* in the County of *York* unto *London*, and from *London* aforesaid unto *Wakefield* aforesaid, for all the said Time, for a Reward to be therefore had. And whereas by the Law and Custom of this Kingdom of *England*, every common Carrier of Goods and Chattels, who receives the Goods and Chattels of any Person so to be carried, is bound to keep and carry the same without Substraction and Loss, so that by the Default of such common Carrier, or his Servants, Damage may not in any Manner come to pass. And whereas the said *John* on the same 16th Day of *March* in the Year of our Lord 1693 abovesaid, at *London* aforesaid, that is to say, in the Parish of the Blessed *Mary of the Arches* in the Ward of *Cheape*, was possessed of the Goods and Chattels following, that is to say, of one Deal Box, and one hundred Pieces of Gold Coin, called Guineas, of lawful Money of *England*, as of his own proper Goods and Chattels; and the aforesaid *John* being thereof so possessed, on the same 16th Day of *March* in the Year of our Lord 1693 abovesaid at *London* aforesaid, to wit, in the Parish and Ward aforesaid, he the said *John* then and there delivered the Box aforesaid, with the said one hundred Pieces of Gold Coin, called Guineas, to the aforesaid *Josbua* to carry the same safely and securely from *London* aforesaid unto *Wakefield* aforesaid for a Reward; and the aforesaid *Josbua* then and there had and received the said Box and the said 100 Pieces of Gold Coin, called Guineas, being therein to be carried and delivered in Form aforesaid: Nevertheless the said *Josbua* at any Time afterwards until now hath not delivered the Box aforesaid, with the said 100 Pieces of Gold being therein, to him the said *John*: But the Box aforesaid, and the said 100 Pieces of Gold Coin being therein, afterwards, to wit, on the 17th Day of *March* in the Year of our Lord 1693 abovesaid at *London* aforesaid in the Parish and Ward aforesaid, by Default of the good Keeping of him the said *Josbua* was lost. And also whereas on the 16th Day of *March* in the Year of our Lord 1693 abovesaid, at *London* aforesaid, to wit, in the Parish and Ward aforesaid, the said *John* was possessed of other Goods and Chattels following, to wit,

Count in
Trover.

one Deal Box, and 100 Pieces of Gold Coin, called Guineas, of lawful Money of *England*, as of his own proper Goods and Chattels; and being so possessed thereof, he the said *John* afterwards, to wit, on the same 16th Day of *March* in the Year of our Lord 1693 abovesaid, at *London* abovesaid in the Parish and Ward abovesaid, casually lost those Goods and Chattels out of his Hands and Possession; which said Goods and Chattels afterwards, to wit, the same 16th Day of *March* in the Year of our Lord 1693 abovesaid, in the Parish and Ward abovesaid, came to the Hands and Possession of the abovesaid *Joshua*, by finding: Nevertheless the said *Joshua* knowing the said Goods and Chattels last mentioned to be the proper Goods and Chattels of the abovesaid *John*, and of Right to belong and appertain to him the said *John*, yet contriving and fraudulently intending craftily and subtilly to deceive and defraud the abovesaid *John* in this Behalf, hath not yet delivered the said Goods and Chattels last mentioned to him the said *John*, altho' often requested, &c. but the Goods and Chattels last mentioned afterwards, to wit, on the 17th Day of *March* in the Year of our Lord 1693 abovesaid, at *London* abovesaid in the Parish and Ward abovesaid, converted and disposed of to the proper Use and Benefit of him the said *Joshua*, to the Damage of him the said *John* of 150 *l.* and thereupon he brings Suit, &c.
General Issue Not guilty.

Fletcher against Ingram. 1 *Ld. Raym.* 69.

Staffordshire, (to wit) **J**OSEPH *Ingram* and *John Hale* Replevin.

were summoned to answer to *James Fletcher* of a Plea, wherefore they took one Mare of him the said *James*, and unjustly detained her, against Gages and Pledges, &c. And whereupon the said *James* by *John Lilly* his Attorney complains, that the abovesaid *Joseph* and *John* on the 20th Day of *February* in the seventh Year of the Reign of the Lord *William* the Third, now King of *England*, &c. at *Shewston* in the County abovesaid; in a certain Place there called *The Lane*, took the Mare abovesaid of him the said *James*, and unjustly detained her against Gages and Pledges until, &c. and whereupon the said *James* saith that he is injured, and hath Damage to the Value of 20 *l.* and thereupon he brings Suit, &c.

And the abovesaid *Joseph* and *John Hale* by *Thomas Cal-*
low their Attorney come and defend the Force and Injury
then, &c. and as Bailiffs of *Rowland Fryth*, Gent. well

Defendants
make Cogni-
zance as Bai-
liffs of the
Lord of the
Manor.

PLEADINGS TO THE CASES.

Prescription
to hold a
Court-Leet.

Prescription
for the Ho-
mage to
choose a Con-
stable.

who is to take
the Office and
an Oath for
the due Exe-
cution of it,
under a Pe-
nalty to be
imposed by
the Homage.

acknowledge the taking of the Mare aforesaid, in the Place in which, &c. and justly &c. because they say, that the same Place in which the taking of the Mare aforesaid is supposed to be done, containeth, and at the said Time when the same taking of the Mare is supposed to be done, did contain in itself one Acre of Land, with the Appurtenances, in *Shewston* aforesaid; which said Town of *Shewston* is, and from the said Time when, &c. and also from Time whereof the Memory of Man is not to the contrary, was within the Manor of *Shewston*, with the Appurtenances, in the County of *Stafford* aforesaid, of which said Manor, with the Appurtenances, the aforesaid *Rowland* is, and at the said Time when, &c. and long before was seised in his Demesne as of Fee; and the said *Rowland*, and all those whose Estate he hath in the same Manor, with the Appurtenances, from Time whereof the Memory of Man is not to the contrary, have had, and been accustomed to have a Court-Leet or View of Frankpledge of the same Manor, and whatsoever belongeth to the View of Frankpledge, of all the Inhabitants and Resiants within that Manor, before his Steward of the same Court for the Time being, in every Year within the Month next after the Feast of Saint *Michael* the Archangel, to be holden at that Manor yearly, as to the said Manor, with the Appurtenances, belonging. And they the said *Joseph* and *John* further say, that within the Manor aforesaid there is had, and from Time whereof the Memory of Man is not to the contrary, there hath been had a certain Custom, that the Jurors charged and sworn to inquire of, and present those Things which belong to the Court-Leet and View of Frankpledge aforesaid, at the Court of View of Frankpledge of the Manor aforesaid, holden at that Manor within the Month next after the Feast of Saint *Michael* the Archangel yearly, have chosen, and for all the Time aforesaid have been accustomed to choose one fit Man of the Inhabitants within the Manor aforesaid, to be Constable of the Constablewick of *Shewston* aforesaid, to serve in that Office for one Year, which said Man so chosen took upon himself that Office, and for the Time aforesaid was used and accustomed to take it, and hath taken and been accustomed to take an Oath for the due Execution of that Office, under a reasonable Pain, for the Time aforesaid, by the Jurors aforesaid at such Court-Leet and View of Frankpledge in that Behalf imposed. And the said *Joseph* and *John* further say, that the aforesaid *Rowland* being Lord of the Manor aforesaid, with the Appurtenances

Appurtenances

Appurtenances, and being seised of the same in Form aforesaid, at the Court-Leet or View of Frankpledge of that Manor, holden at the said Manor within the Month next after the Feast of Saint *Michael* the Archangel, to wit, on the ninth Day of *October* in the fifth Year of the Reign of the Lord *William* the Third the now King, and of the Lady *Mary*, late Queen of *England*, &c. before *Henry Frith*, Gent. then Steward of that Court of him the said *Rowland*, the aforesaid *James Fletcher* then and long before being an Inhabitant within the Manor aforesaid, to wit, at *Shewston* aforesaid, and being a fit Man to be Constable of the aforesaid Constablewick of *Shewston* aforesaid, by *Edward Thorneton*, *Thomas Grace*, *John Cooke*, *Joseph Alsop*, *James Standley*, *William Milner*, *William Ridding*, *Michael Wiat*, *Thomas Salt*, *James Milner*, *John Silvester*, *John Adcock* and *John Dickeson*, honest and lawful Men and Inhabitants within the Manor aforesaid, and then and there in the same Court sworn and charged to inquire and present those Things which to the Court-Leet and View of Frankpledge did belong, in due Manner and according to the Custom aforesaid, was chosen to be Constable of the Constablewick of *Shewston* aforesaid, to serve in that Office for one Year then next following: And the said Jurors then and there in the same Court did order that the said *James* should make his Oath for the due Execution of his Office aforesaid, under the Pain of forfeiting 40*s.* whereof the aforesaid *James Fletcher* immediately afterward, to wit, the same Day and Year had Notice, yet the said *James* hath not made his Oath for the due Execution of the Office of Constable aforesaid, nor hath executed or taken upon himself that Office, but he to do those Things then, and often afterwards, there, absolutely refused, by which, afterwards and before the Time when, &c. to wit, at the Court-Leet or View of Frankpledge of the Manor aforesaid of the said *Rowland* at that Manor, within the Month next after the Feast of Saint *Michael* the Archangel, to wit, on the 11th Day of *October* in the 6th Year of the Reign of the said Lord the King and Lady *Mary*, late Queen of *England*, holden before the said *Henry Frith*, then Steward of him the said *Rowland* of that Court, by *Edward Thorneton*, &c. honest and lawful Men, then Inhabitants within the Manor aforesaid, then and there in the same Court sworn and charged to inquire and present those Things which to the Court-Leet or View of Frankpledge aforesaid did belong, it was presented, that the aforesaid *James Fletcher*, for that he was duly chosen Constable of the Constable-

That the Plaintiff was chosen Constable by the Homage.

That the Plaintiff hath refused to take on him the Office, and the Oath.

Plaintiff is
fined 40 s.

For Payment
of which De-
fendants took
the Mare.

Demurrer to
the Cogni-
zance.

Joinder in
Demurrer.

wick of *Sheshown* aforesaid, at the last Lect holden for the Manor aforesaid, and under the Pain of 40 s. upon him imposed, he was ordered to take upon himself and execute that Office, and to make his Oath in Form aforesaid for the due Execution of the said Office, which Things, or any Thing thereof, he hath not done, therefore he hath forfeited to the Lord of the Manor aforesaid the said 40 s. for the Pain aforesaid, then to be paid to the Lord of the Manor aforesaid, as by the Record thereof in the Power of the said Steward of the Court of the Manor of him the said *Rowland* aforesaid at that Manor remaining, more fully appears: And because the said 40 s. for the Pain aforesaid to him the said *Rowland*, being Lord of the Manor aforesaid, as before is set forth, at the said Time when, &c. was in Arrear, and not paid, they the said *Joseph* and *John*, as Bailiffs of him the said *Rowland*, well acknowledge the taking of the Mare aforesaid in the said Place in which, &c. and justly, &c. for the said 40 s. for the Pain or Amercement aforesaid so being in Arrear, and not paid to the said *Rowland*, and within the Manor aforesaid, &c.

And the aforesaid *James* saith, that by any Thing by the aforesaid *Joseph* and *John* above in the Cognizance aforesaid in Pleading alledged, they the said *Joseph* and *John* ought not to acknowledge the taking of the Mare aforesaid in the said Place, &c. to be just, because he saith, that the Plea aforesaid by them the said *Joseph* and *John* in Manner and Form aforesaid above pleaded, and the Matter in the same contained, are not sufficient in Law for the acknowledging the taking of the Mare aforesaid in the said Place in which, &c. to be just, and that he, to that Cognizance in Manner and Form above made and pleaded, hath no Necessity, nor is he bound by the Law of the Land to answer; and this he is ready to verify: Wherefore for want of a sufficient Plea in this Behalf, he the said *James* prays Judgment and his Damages, by occasion of the taking and unjustly detaining of the Mare aforesaid, to be adjudged to him, &c.

And the aforesaid *Joseph* and *John* say, that the Plea aforesaid by them the said *Joseph* and *John* in Manner and Form aforesaid above pleaded, and the Matter in the same contained, are good and sufficient in Law for them the said *Joseph* and *John* to acknowledge the taking of the said Mare in the said Place in which, &c. to be just; which said Plea, and the Matter in the same contained, they the said *Joseph* and *John* are ready to verify and prove, as the Court, &c. And because the said *James* to that Cognizance hath not pleaded or answered, nor the same hath hitherto in any Manner denied, they the said *Joseph* and *John* pray

pray Judgment, and a Return of the Mare aforesaid, together with their Damages, Costs and Charges, according to the Form of the Statute in such Case made and provided, to be adjudged to them, &c. And because the Court of *Curia advt.* the said Lord the King now here is not yet advised of the *sare vult.* giving of their Judgment of and upon the Premises, Day is thereupon given to the Parties aforesaid, before the Lord the King from the Day of———wheresoever, &c. to hear their Judgment of and upon the Premises aforesaid, for that the Court of the said Lord the King now here are not yet advised, &c.

Trinity Term in the seventh Year of King William the Third.
Roll. 1703.

Laughton against Ward. 1 Ld. Raym. 75. Reported by
the Name of Lawton against Ward.

Winford.

Yorkshire, (to wit) **T**HOMAS Ward late of *Tickbill* in Action upon the County aforesaid, Yeoman, was the Case for attached to answer to *William Laughton*, Gent. of a Plea of disturbing Trespass upon the Case, &c. And whereupon the said Plaintiff in the *William* by *A. B.* his Attorney complains, that whereas on Use of his the 10th Day of *May* in the 6th Year of the Reign of Way. the Lord *William* now King, and Lady *Mary* the second, late Queen of *England*, &c. and long before, and continually afterward until now, he the said *William Laughton* was seized, and yet is seised of, and in one Close of Land, with the Appurtenances, called *Langdale*, lying and being in the Parish of *Tickbill* aforesaid, and of one Close of Meadow, with the Appurtenances, called *Goody Ing*, lying and being in the Parish aforesaid, and next adjoining to the said Close called *Langdale*, in his Demesne as of Fee; and he the said *William Laughton*, and all those whose Estate he the said *William Laughton* now hath, and for all that Time had of and in the Tenements aforesaid, with the Appurtenances, from Time whereof the Memory of Man is not to the contrary, have had, and have been used and accustomed to have, a certain Way, as well a Footway as an Horseway, and for their Carts and Carriages from the King's common Highway in the Parish of *Tickbill* aforesaid; which said King's Way leads between the Towns of *Tickwell* aforesaid and *Wadworth* in the County aforesaid, in, by and through

PLEADINGS TO THE CASES.

through a certain Place called *Badfley Well Lane*, lying within the Parish of *Tickbill* aforesaid, and so unto and into a certain other Place called *Langdale's Lane*, and from thence unto and into the said Close called *Langdale*, and so backwards from that Close unto the King's Way aforesaid, every Year, at all Times of the Year through the Way aforesaid, in Form aforesaid described, as to his Tenements aforesaid, with the Appurtenances, belonging: Nevertheless the said *Thomas* not being ignorant of the Premises, but contriving and fraudulently intending him the said *William Laughton* in this Behalf unjustly to aggrieve and to hinder, and, as much as he could, to deprive him the said *William Laughton* of the Use of his Way aforesaid, on the said 10th Day of *May* in the 6th Year aforesaid, with his Carts and Carriages, to wit, with the Wheels thereof, the Way aforesaid in the said Place called *Badfley Well Lane*, insomuch spoiled and damaged, that the said Way there became of no Use to him the said *William Laughton*, to the Damage of him the said *William Laughton* of 20 l. and thereupon he brings Suit, &c.

Justification
for a Way
throug the
Way in the
Decla ration.

And the said *Thomas* by *Robert Vesey* his Attorney comes and defends the Force and Injury when, &c. and saith, that the said *William* ought not to have his said Action against him, because protesting that the Declaration aforesaid, and the Matter in the same contained, are not sufficient in Law to have the said Action of the said *William* to be maintained against him the said *Thomas*: Nevertheless for Plea the said *Thomas* saith, that one *William Vesey*, Gent. on the said 10th Day of *May* in the 6th Year aforesaid, and long before and continually afterwards until now was seised, and yet is seised, of and in one Close of Land called *Badfley Well Close*, with the Appurtenances, in the Parish of *Tickbill* aforesaid, in his Demesne as of Fee; and that he the said *William Vesey*, and all those whose Estate he hath, and for that Time had, of and in his Close aforesaid, with the Appurtenances, from Time whereof the Memory of Man is not to the contrary, have used, and had, and have been accustomed to use and have a certain Way, as well a Horseway as a Footway, and for their Carts and Carriages from the said King's common Way in *Tickbill* aforesaid, in the Declaration aforesaid above specified, in, by, and through the said Place called *Badfley Well Lane*, and from thence unto, and into the said Close of him the said *William Vesey* called *Badfley Well Close*, and so backward from the same Close called *Badfley Well Close*, through the same Way unto the King's common Way aforesaid, in *Tickbill* aforesaid

said in every Year, at all Times of the Year, at his Will and Pleasure; by which he the said *Thomas*, as Servant of the aforesaid *William Vesey*, and by his Command, on the said 10th Day of *May* in the 6th Year aforesaid, with the Carts and Carriages of him the said *William Vesey*, from the King's common Way aforesaid, in, by, and through the said Place called *Badfley Well Close*, and so back again, went, returned and passed by the Way aforesaid in Form aforesaid described, using that Way, as it was well lawful for him to do; and so by going, returning and passing in, by, and through the same Way he the said *Thomas*, the Soil of that Way in the said Place called *Badfley Well Lane*, with the Wheels of those Carts and Carriages a little subverted, doing as little Damage as he could in that Way, which are the same spoiling and damaging of the aforesaid Way in the said Place called *Badfley Well Lane*, whereof the aforesaid *William Laughton* above himself now complains; and this he is ready to verify: Wherefore he prays Judgment if the aforesaid *William Laughton* ought to have his said Action against him the said *Thomas*, &c.

And the said *William Laughton* saith, that he by any Thing before alledged ought not to be barred from having his said Action thereof against the said *Thomas*, because he saith, that well and true it is that the said *William Vesey*, Gent. on the said 10th Day of *May* in the 6th Year aforesaid, and long before, and continually afterwards until now was seised, and yet is seised of, and in the said Close of Land called *Badfley Well Close*, with the Appurtenances, in the Parish of *Tickbill* aforesaid, in his Demesne as of Fee; and that he the said *William Vesey*, and all those whose Estate he hath, and for the Time aforesaid had of and in the Close aforesaid, with the Appurtenances, from Time whereof the Memory of Man is not to the contrary, have used and had, and have been accustomed to use and have a certain Way, as well a Horseway as a Footway, for his Carts and Carriages, from the said King's common Way in *Tickbill* aforesaid, in the Declaration above specified, in, by, and through the said Place called *Badfley Well Lane*, and from thence unto, and into the said Close of him the said *William Vesey*, called *Badfley Well Close*, and so backward from the said Close called *Badfley Well Close*, by the same Way unto the King's common Way aforesaid, in *Tickbill* aforesaid, in every Year, at all Times of the Year, at his Will and Pleasure, as the said *Thomas* above in pleading thereof hath alledged: But he the said *William Laughton* further saith, that the said *Thomas* in using the Way aforesaid with his

Replication
confesses the
Way of De-
fendant.

Carts

PLEADINGS TO THE CASES.

But that Defendant went beyond the Close to which he prescribed to have a Way.

Carts and Carriages afore said from the King's common Way afore said, in, by, and through the said Place called *Badfley Well Lane*, and from thence unto, and into the said Close called *Badfley Well Close*, and beyond the said Close called *Badfley Well Close*, into a certain other Close of him the said *William Vesey* there called *Warton Langdalls*, and so backward from the said Close called *Warton Langdalls* unto the said Close called *Badfley Well Close* afore said, and so unto the King's Way afore said, through the Way afore said, in Form afore said described, unjustly and contrary to the Form of the Prescription afore said, went, returned and journeyed in going to the said Close called *Warton Langdalls*, and from thence by returning with his Carts and Carriages afore said in Form afore said, and by the Way afore said, to wit, with the Wheels of his Carts and Carriages afore said, the Way afore said in the said Place called *Badfley Well Lane*, in-so-much spoiled and damaged that the said Way there became of no Use to him the said *William Laughton*, as he the said *William Laughton* above hath thereof declared against him; and this he is ready to verify: Wherefore he prays Judgment and his Damages, by occasion of the Premises, to be adjudged to him, &c.

Rejoinder alledges no new Matter, but relies on the Matter before.

And the said *Thomas*, for that the said *William Laughton* above hath acknowledged that the said *William Vesey*, and all those whose Estate he hath, and had as before is set forth, of, and in his Close afore said called *Badfley Well Close*, with the Appurtenances, from Time whereof the Memory of Man is not to the contrary, have used, and had, and have been accustomed to use and have the Way afore said leading between the King's common Way afore said, and that Close, by, and through the said Place called *Badfley Well Lane*, in every Year, at all Times of the Year, at his Will and Pleasure, as the said *Thomas* above hath alledged; and so the Way afore said by and through the said Place called *Badfley Well Lane*, doth not belong to the said Tenements of the said *William Laughton* only, as he hath above supposed; and for that it was well lawful, and is lawful for him the said *William Vesey*, being in the said Close called *Badfley Well Close*, from thence into his said other Close called *Warton Langdalls*, and backward from thence into the said Close called *Badfley Well Close*, to go and return at his Will and Pleasure, and this without any Damage whatsoever to be done to any Person thereby, as before prays Judgment, &c.

Demurrer, and Joinder in Demurrer.

Brownlow

Brownlow against Hewley. 1 Ld. Raym. 82.

JOHN Hewley late of the City of York in the County of the City of York, Knt. was summoned to answer to John Brownlowe, Bart. and William Brownlowe, Esq; Executors of the Will of John Brownlowe, Bart. deceased, late Executor of the Will of Richard Brownlowe, Esq; of a Plea, that he render to them 550*l.* which he unjustly detains from them. And whereupon they the said J. B. and W. B. the now Plaintiffs, by B. C. their Attorney say, That whereas one John Walter, Knt. James Fullerton and Thomas Trevor, Knt. on the first Day of September in the 3d Year of the Reign of the Lord Charles the First, late King of England, &c. were possessed (among other Things) of a certain Park called H. Park in the Parish of K. in the County of York, for the Term of 99 Years, beginning from the Feast of Saint Michael the Archangel in the 14th Year of the Reign of the Lord James the First, late King of England, &c. and being so possessed thereof, they the said J. W. J. F. and T. T. afterwards, to wit, on the said first Day of September in the third Year of the Reign of the Lord the late King Charles the First abovesaid, at the said Parish of K. by their certain Indenture there made between the said J. W. J. and T. by the Names of J. W. Knt. Chief Baron of the Court of Exchequer of the Lord the King, J. F. Knt. one of the Gentlemen of the Bed-Chamber of the Lord the King, and T. T. Knt. one of the Barons of the said Court of Exchequer, of the one Part, and C. H. Esq; W. L. Gent. T. F. Gent. and H. G. Gent. by the Names of, &c. (as in the Deed) of the other Part, (Counterpart whereof, sealed with the Seals of the said C. W. L. T. F. and H. they the said J. B. and W. B. the now Plaintiffs, bring here into Court, the Date whereof is the same Day and Year) granted and assigned to the said W. L. F. and H. the said Park, with the Appurtenances, (among other Things) by the Names of all that Lordship or Manor of C. with all and singular the Rights, Members and Appurtenances thereof in the County of Gloucester, then lately Parcel of the Lands and Possessions of Henry then late Prince of Wales, and before that Time Parcel of the Possessions of the then late Monastery of S. and of all that Park and inclosed Land called H. Park, with the Appurtenances, in the said County of York, and of the Herbage and Pannage of the same Park, and of the Keepership as well of the Deer as of the Lodges and House there; and

Debt for Rent for an Executor of an Executor against Assignee of the whole Term.

That J. W. &c. were possessed of a Park for 99 Years; and assigned it to W. L. and others.

PLEADINGS TO THE CASES.

To hold for
the Residue
of the said
Term.

Rendering for
the said Park
100*l.* per An.
&c.

4 March, 3
Car. 1. Grant
to the said
Testator *Rich-
ard Brown-
lowe* the said
Rent of 100*l.*
for the Residue
of the said
Term.

and all those Closes or Pastures called *V.* sometime inclosed within the Park aforesaid, Parcel or reputed Parcel of the Dutchy of *Lancaster*, and Parcel or reputed Parcel of the Honour of *K.* in the said County of *York*, and of all and singular the Messuages, Houses, Edifices, Buildings, Barns, Stables, Dovehouses, Yards, Orchards, Gardens, Chases, Warrens, Vivaries, Fishings, Streams, Pools, Lands, Tenements, Meadows, Feedings, Pastures, Woods, Underwoods, Commons, Wastes, Furze, Moors, Marshes, Void Grounds, Waifs, &c. To have, hold and enjoy the Premises aforesaid, with the Appurtenances, to the said *W. L. T. F.* and *H. G.* their Executors, Administrators and Assigns, for and during the whole Remainder and Residue of the said Term of 99 Years, then to come and unexpired; Yielding and paying therefore yearly during the whole Term aforesaid then to come and unexpired, to the said *J. W. J. F.* and *T. T.* their Executors, Administrators and Assigns, the several annual Rents or Sums of Money in the same Indenture afterwards mentioned, to wit, for the said Lordship of *C.* with the Appurtenances, the annual Rent or Sum of 97*l.* 12*s.* 10*d.* $\frac{1}{2}$ and for the said Park of *H.* with the Appurtenances, the yearly Rent or Sum of 100*l.* of lawful Money of *England*, at the Feast of Saint *Michael* the Archangel and the Annunciation of the Blessed Virgin *Mary*, by even and equal Portions, to be paid to the Hands of the Bailiff, or particular Receiver of the Premises for the Time being, as by the same Indenture more fully appears: By Virtue of which said Grant and Assignment the aforesaid *W. L. T. H.* and *H. G.* into the Park aforesaid, with the Appurtenances, (among other Things) entred, and were possessed thereof; and being so possessed thereof, and the said *J. W. J. F.* and *T. T.* being possessed of the aforesaid annual Rent, so as aforesaid reserved during the said Term, the aforesaid *J. W. J. F.* and *T. T.* afterwards, to wit, the fourth Day of *March* in the 3d Year of the Reign of the said Lord *Charles* the First, late King of *England* aforesaid, at the said Parish of *K.* by a certain Indenture there made between the said *J. W. J. F.* and *T. T.* by the Names of, &c. (as in the Deed) of the one Part, and the said *Richard Brownlowe*, by the Name of *Richard Brownlowe*, of the *Inner Temple, London*, Esq; of the other Part, (one Part of which said Indenture, sealed with the Seals of the said *J. W. J. F.* and *T. T.* they the said *J. B.* and *W. B.* the now Plaintiffs, bring here into Court, the Date whereof is the same Day and Year) granted to the said *R. B.* (among other Things) all the said annual Rent of 100*l.* for

as aforesaid, to be paid for the aforesaid Park of *H.* To have and to hold the said annual Rent to the said *R. B.* his Executors and Assigns, to his and their own proper Use and Utes, from the Time of the Sealing and Delivery of the same Indenture last mentioned, for and during the Residue of the said Term of 99 Years then to come and unexpired, as by the said Indenture (among other Things) more fully appears; to which said Grant of the Rent aforesaid, they the said *W. L. T. F.* and *H. G.* being possessed of the said Park, with the Appurtenances, as aforesaid, afterwards, to wit, on the 20th Day of *March* in the 3d Year of the Reign of the late King *Charles* the First aforesaid, at the said Parish of *K.* themselves attorned and agreed: By Virtue of which Grant, and by reason of the Attornment and Agreement aforesaid, the said *R. B.* was to the said Grant. possessed of the said annual Rent of 100*l.* for the Residue of the Term aforesaid; and being so possessed thereof, the said *Richard* afterwards, to wit, on the first Day of *January* 1. *Jan.* 1637. in the Year of our Lord 1637, at the Parish of *K.* made *R. B.* made his last Will and Testament in Writing, and by the same his Will, and Will appointed the said *J. Brownlowe*, now deceased, and the said *J. B.* then being in full Life, Executor of his Will aforesaid, and his Executor. afterwards there died possessed of the said annual Rent as aforesaid, after whose Death the said *J. B.* now deceased, in his Life-time took upon himself the Burthen of the Execution of the said Will of the said *R.* and proved that Will in due Form of Law, to wit, at the said Parish of *K.* and was possessed of the annual Rent aforesaid, by reason of the Execution of that Will. And the aforesaid *J. B.* and *W. B.* the now Plaintiffs, further say, that the Estate of of them the said *W. L. T. F.* and *H. G.* of and in the Park aforesaid, with the Appurtenances, by Virtue of the Demise aforesaid by the said *J. W. J. F.* and *T. T.* to the said *L. T. F.* and *H. G.* made afterwards, to wit, on the 20th Day of *May* in the 20th Year of the Reign of the Lord *Charles* the Second, late King of *England, &c.* at the aforesaid Parish of *K.* came to the said *J. H.* by Assignment; That on the 20th Day of *May* in the 20th Year of *Car. 2.* the Estate came to Defendant by Assignment. by Virtue whereof the said *J. H.* was and yet is possessed of the Park aforesaid, with the Appurtenances, for the Residue of the Term aforesaid; and the aforesaid *J. H.* being so possessed thereof, and the aforesaid *J. B.* now deceased, being in his Life-time possessed of the said annual Rent as aforesaid, the said *J. B.* (now deceased) afterwards in his Life-time, to wit, on the third Day of *September* in the 31st Year of the Reign of the Lord *Charles* the Second, late King of *England, &c.* at the said Parish of *K.* made his last

PLEADINGS TO THE CASES.

3 Sept. 31 Car.
2. the said
J. B. made
his Will, and
the Plaintiffs
his Executors.

550*l.* of the
said Rent for
5 Years and
an half in Ar-
rear the 25
March, 7
W. 3.

By which an
Action, &c.

Bar that De-
fendant was
ready upon
the Land to
pay.

last Will and Testament in Writing, and by the said Will appointed the said J. B. and W. B. the now Plaintiffs, Executors of his said Will, and afterwards there died possessed of the said annual Rent as aforesaid; after whose Death the said J. B. and W. B. the now Plaintiffs, took upon themselves the Burthen of the Execution of the said Will, and proved that Will in due Form of Law, to wit, at the Parish of K. and were and yet are possessed of the annual Rent aforesaid, by reason of the Execution of that Will; and being so possessed thereof, and the said J. Hewley being possessed of the Park aforesaid, with the Appurtenances, five hundred and fifty Pounds of the annual Rent aforesaid, for five Years and one half of an Year, ended at the Feast of the Annunciation of the Blessed Virgin Mary, in the 7th Year of the Reign of the Lord the now King, at the same Feast, to them the said J. B. and W. B. the now Plaintiffs, were in Arrear, and yet are unpaid; by which an Action hath accrued to them the said J. B. and W. B. the now Plaintiffs, to require and have of the said J. H. the said 550*l.* Nevertheless the said J. Hewley, although often requested, the said 550*l.* to them the said J. B. and W. B. the now Plaintiffs, hath not yet rendered, but to render the same to them hath hitherto refused, and yet doth refuse; whereupon they say that they are injured, and have Damage to the Value of 100*l.* And thereupon they bring Suit, &c. And they bring here into Court, as well the Letters Testamentary of the said R. B. by which it sufficiently appears to the Court here, that the said J. B. now deceased, in his Life-time, was Executor of the Will of the said R. B. as the Letters Testamentary of the said J. B. deceased, by which it sufficiently appears to the Court here, that they the said J. B. and W. B. the now Plaintiffs, are Executors of the Will of the said J. B. deceased, and thereof to have Administration, &c.

And the aforesaid John Hewley by S. W. his Attorney comes and defends the Force and Injury when, &c. and as to 50*l.* Parcel of the said 550*l.* of the Rent aforesaid for half an Year, ended at the Feast of the Annunciation of the Blessed Virgin Mary, in the second Year of the Reign of the Lord the now King and of the Lady Mary, late Queen of England, &c. he the said J. H. saith, that the aforesaid J. B. and W. B. ought not to have their said Action thereof against him, because he saith, that he the said J. H. in, and upon that Feast, for the Space of one Hour before the Setting of the Sun of the same Day, and after the Setting of the Sun of that Day, was in, and upon the
Park

Park aforesaid ready to pay to them the said *J. B.* and *W. B.* the said 50*l.* payable at that Feast as aforesaid; and that neither the said *J. B.* nor *W. B.* nor either of them, nor any Person on their or either of their Behalf, were or was then and there ready to receive that Rent, and that the said Rent at any Time afterwards hitherto in and upon the Park aforesaid, with the Appurtenances, or any Part thereof, by them the said *J. B.* and *W. B.* or either of them, hath not been demanded; and this he is ready to verify: Wherefore he prays Judgment if the said *J. B.* and *W. B.* ought to have or maintain their said Action thereof against him: And as to 50*l.* Parcel of the said 550*l.* of the said Rent for another half of an Year ended at the Feast of Saint *Michael* the Archangel, in the second Year of the Reign of the Lord the now King, and the Lady *Mary* the late Queen of *England*, &c. he the said *J. H.* saith, that the said *J. B.* and *W. B.* ought not to have their said Action thereof against him, because he saith that he the said *J. H.* in and upon that Feast, for the Space of one Hour, before the Setting of the Sun of the same Day, and after the Setting of the Sun of the same Day, was in and upon the Park aforesaid ready to pay to them the said *J. B.* and *W. B.* the same 50*l.* payable at that Feast as aforesaid; and that neither the said *J. B.* and *W. B.* nor either of them, nor any other Person on their or either of their Behalf, were, or was then and there ready to receive that Rent; and that the said Rent, at any Time afterwards hitherto in, and upon the Park aforesaid, with the Appurtenances, or any Part thereof, by them the said *J. B.* and *W. B.* or either of them, hath not been demanded; and this he is ready to verify: Wherefore he prays Judgment if the said *J. B.* and *W. B.* ought to have or maintain their said Action thereof against him, &c. (There are the like Pleas to every other half Year's Rent demanded in the Declaration.)

And that the Rent hath not been since demanded.

And the said *J. B.* and *W. B.* say, that the said several Pleas of the said *J. H.* in Manner and Form aforesaid pleaded, and the Matter in the same contained, are not sufficient in Law to bar the said *J. B.* and *W. B.* from having their said Action thereof against him, and that they, to those Pleas in Manner and Form aforesaid pleaded, have no Necessity, nor are they bound by the Law of the Land to answer; and this they are ready to verify: Wherefore for want of sufficient Pleas in this Behalf, they the said *J. B.* and *W. B.* pray Judgment and their said Debt, together with

Demurrer.

PLEADINGS TO THE CASES.

Causes of De-
murrer.

with their Damages, by occasion of the Detention of that Debt, to be adjudged to them, &c. And for Causes of Demurrer in Law in this Behalf, they the said *J. B.* and *W. B.* demonstrate and shew to the Court here the Causes following, to wit, Because that the said *J. H.* in his several Pleas aforesaid hath not pleaded or alledged that he was ready to pay to them the said *J. B.* and *W. B.* the said Money in the said respective Pleas mentioned, nor hath brought here into Court that Money to be paid to them the said *J. B.* and *W. B.* and for that, because those Pleas are double, uncertain, and want Form, &c.

Joinder in
Demurrer.

And the said *J. H.* for that he sufficient Matter in Law in the said several Pleas to bar the said *J. B.* and *W. B.* from having their said Action against him the said *J. H.* above in pleading hath alledged, which he is ready to verify; which said Matter they the said *J. B.* and *W. B.* have not denied, nor in any Manner answered to the same, and have wholly refused to admit that Averment, as before prays Judgment, and that the said *J. B.* and *W. B.* may be barred from having their said Action thereof against him the said *J. H.* &c.

Hussey against Jacob. 2 *Ld. Raym.* 87.

Declaration
on a Bill of
Exchange a-
gainst the Ac-
ceptor on the
Custom of
Merchants.

London, (to wit) *WILLIAM Hussey* complains of *Alexander Jacob*, in Custody of the Marshal of the *Marshalsea* of the Lord the King, being before the King himself, for that, to wit, that whereas the City of *London* in this Kingdom of *England*, is, and from Time whereof the Memory of Man is not to the contrary, hath been an antient City; and also whereas the Town of *Hereford* in this Kingdom of *England* is, and for all the Time aforesaid hath been an antient Town; and also whereas there is had and existeth, and for all the Time aforesaid there was had and hath been a certain antient and laudable Custom used and approved amongst Merchants, and other Persons using Commerce, residing in *Hereford* aforesaid, and Merchants and other Persons using Commerce, dwelling in *London* aforesaid, that is to say, that if any Merchant or other Person residing in *Hereford* aforesaid should make any Bill of Exchange according to the Custom of Merchants, and direct the same Bill of Exchange to another Person using Commerce, dwelling in *London* aforesaid, and by the same Bill request the same Merchant, or other Person using Commerce, residing in *London* aforesaid in such Bill of Exchange named, to whom the same Bill of Exchange should

should be so directed, to pay any Sum of Money in such Bill of Exchange mentioned, to any other Merchant or other Person in the same Bill of Exchange at any Time in such Bill of Exchange specified, and that if such Merchant or other Person dwelling at *London* aforesaid, to whom any such Bill of Exchange hath been so directed, hath accepted such Bill of Exchange to him so directed as aforesaid, according to the Custom of Merchants, as well such Merchant, or other Person to whom such Bill of Exchange hath been so directed, hath been chargeable by such Acceptance, and for all the Time aforesaid hath been accustomed to be chargeable to pay such Sum of Money in such Bill of Exchange mentioned, to such Merchant or other Person in such Bill of Exchange named, at the Day or Time in such Bill of Exchange appointed for the Payment thereof, according to the Tenor and Effect of such Bill of Exchange. And whereas the Right Honourable the Lord *Chandois* on the 21st Day of *October* in the Year of our Lord 1693, being at *Hereford* aforesaid, and using Commerce, that is to say, at *London* aforesaid in the Parish of the *Blessed Mary of the Arches* in the Ward of *Cheape*, made his first Bill of Exchange bearing Date the same Day and Year, and directed the same Bill of Exchange to the aforesaid *Alexander Jacob*, then residing and dwelling and using Commerce at *London* aforesaid in the Parish and Ward aforesaid; and by the same Bill of Exchange the aforesaid Lord *Chandois* requested the aforesaid *Alexander Jacob* to pay within a Month after Sight of his first Bill of Exchange the Sum of 120 Pieces of Gold, called *Guineas*, to the aforesaid *William Hussy*, by the Name of Captain *Hussy*, the aforesaid Lord *Chandois* and *William Hussy* then and there using Commerce; and the said *William* afterwards on the 28th Day of the same Month of *October* in the Year above said, at *London* aforesaid in the Parish and Ward aforesaid, did shew the said Bill of Exchange to him the said *Alexander*, and then and there requested the said *Alexander* to accept the said Bill of Exchange, and to pay to him the said *William* the said 120 Pieces of Gold, called *Guineas*, according to the Tenor of the Bill aforesaid; and thereupon the said *Alexander* then and there upon Sight thereof accepted the said Bill of Exchange, according to the Custom of Merchants aforesaid, by reason of which said Acceptance of the said Bill of Exchange, and by reason of the Premises, he the said *Alexander*, according to the Custom aforesaid so used and approved as aforesaid, became chargeable to pay to the aforesaid *William*

PLEADINGS TO THE CASES.

*Indebitatus
Assumpsit* for
Money laid
out.

The like for
Money lent.

The like for
Money had
and received
to the Plain-
tiff's Use.

the said 120 Pieces of Gold in the said Bill of Exchange mentioned, according to the Form and Effect of the said Bill; and the aforesaid *Alexander* afterwards, to wit, the Day and Year last mentioned, at *London* aforesaid at the Parish and Ward aforesaid, in Consideration of the Premises aforesaid assumed upon himself, and to the said *William* then and there faithfully promised that he the said *Alexander* the said 120 Pieces of Gold, called Guineas, in the said Bill of Exchange mentioned, would well and faithfully pay and satisfy to the said *William*, according to the Form and Effect of the said Bill of Exchange. And also whereas the aforesaid *Alexander* afterwards on the first Day of *December* in the Year of our Lord 1693, at *London* aforesaid at the Parish and Ward aforesaid, was indebted to the said *William* in other 120 Pieces of Gold, called Guineas, of the Value of 132 Pounds of lawful Money of *England*, for so much Money by him the said *William* for the said *Alexander*, at the special Instance and Request of him the said *Alexander*, before that Time paid, laid out and disbursed; and being thereof so indebted, the aforesaid *Alexander*, in Consideration thereof, assumed upon himself, and to the said *William* then and there faithfully promised that he the said *Alexander* would well and faithfully pay and satisfy to him the said *William* the said 120 Pieces of Gold, called Guineas, of the Value of the 132 Pounds last mentioned, when he should be thereunto requested. And also whereas the said *Alexander* afterwards, to wit, on the said first Day of *December* in the Year last aforesaid, at *London* aforesaid in the Parish and Ward aforesaid, was indebted to the said *William* in other 132 Pounds of lawful Money of *England*, for so much Money by the said *William* to the said *Alexander*, at the special Instance and Request of him the said *Alexander*, before that Time lent and advanced; and being so indebted, the said *Alexander*, in Consideration thereof, assumed upon himself, and to the said *William* then and there faithfully promised that he the said *Alexander* would well and faithfully pay and satisfy to the said *William* the said 132 Pounds last mentioned, when he should thereunto be required. And also whereas the said *Alexander* afterwards, to wit, on the said first Day of *December* in the Year last aforesaid, at *London* aforesaid in the Parish and Ward aforesaid, was indebted to the said *William* in other 120 Pieces of Gold, called Guineas, of the Value of 132 Pounds of like lawful Money of *England*, for the like Sum of Money by the said *Alexander* for the said *William*, and to the Use of him the said *William* before that Time

had

had and received; and being thereof so indebted, the said *Alexander*, in Consideration thereof, assumed upon himself, and to the said *William* then and there faithfully promised that he the said *Alexander* would well and faithfully pay and satisfy to the said *William* the said 120th Pieces of Gold, called Guineas, last mentioned, when he should be thereto requested: Nevertheless the said *Alexander* not at all regarding his said several Promises and Undertakings in Form aforesaid made, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *William* in this Behalf, hath not paid to the said *William* the said 120 Pieces of Gold, called Guineas, in the said first Promise above mentioned, at a Month after Sight of the said Bill of Exchange abovementioned, or the said several Sums of Money in the said second, third and fourth Promises, although to pay the said several Sums of Money in the said second, third and fourth Promises abovementioned, to him the said *William*, the said *Alexander* afterwards, to wit, on the tenth Day of *April* in the Year of our Lord 1694, and often afterwards, at *London* aforesaid in the Parish and Ward aforesaid, was requested by the said *William*, but hath hitherto wholly refused, and yet doth refuse, to pay the same to him, whereupon the said *William* saith that he is injured, and hath Damage to the Value of 400 *l.* and thereupon he brings Suit, &c. And now here at this Day, to wit, *Friday* next after the Morrow of the Holy Trinity in this same Term, until which Day the said *Alexander* had leave to imparl to the said Bill, and then to answer before the Lord the King at *Westminster*, come as well the said *William* by his said Attorney, as the said *Alexander* by *Vincent Skynes* his Attorney; and the said *Alexander* defends the Force and Injury when, &c. and as to the second, third and fourth Promises and Undertakings in the said Declaration abovementioned, the said *Alexander* saith, that he did not assume upon himself in Manner and Form as the said *William* above complains against him; and of this he puts himself upon the Country, and the said *William* thereof likewise: And as to the said first Promise and Undertaking in the said Declaration above mentioned, the said *Alexander* saith, that he by Virtue of the said Bill of Exchange in the first Promise and Undertaking abovementioned by him as aforesaid made, ought not to be charged, because protesting that the said Lord *Chandois* at the said Time of making the said Bill of Exchange, or at any Time afterwards, was not a Person using Commerce; protesting also, that the said *William* at the said Time of

Breach of the first Promise.

And of the other three Promises.

Imparlanoe.

General Issue to the 2d, 3d and 4th Counts.

Plea as to the first Count.

Protestando that Lord Chandois was not a Merchant;

and that the Plaintiff was not a Merchant.

The Stat.

14 Car. 2.

against Gaming pleaded, that the Bill was given for Money lost at Hazard by Lord *Chandois* to the Plaintiff.

Demurrer.

making the said Bill of Exchange was not a Person using Commerce, as the said *William* by his said Declaration above supposes; nevertheless the said *Alexander* for Plea saith, that after the 29th Day of *September* in the Year of our Lord 1664, and before the making the said Bill of Exchange, to wit, on the 21st Day of *October* in the Year of our Lord 1693 aforesaid, at *London* aforesaid in the Parish and Ward aforesaid, the said Lord *Chandois* and *William* played between themselves with Dice at a certain Game called Hazard, and that the said Lord *Chandois* then and there at that Game at one Time and at one Meeting lost to the said *William* the abovementioned Sum of 120 Pieces of Gold, called Guineas, and that for securing the Payment of the said 120 Pieces of Gold lost by him the said Lord *Chandois* to the said *William* as aforesaid, he the said Lord *Chandois* afterwards, to wit, on the said 21st Day of *October* in the Year of our Lord 1693 aforesaid, at the Parish and Ward aforesaid, directed his first Bill of Exchange to the said *Alexander*, and by the same Bill of Exchange the said Lord *Chandois* requested him the said *Alexander* to pay at a Month after Sight of the said Bill of Exchange the said Sum of 120 Pieces of Gold, called Guineas, to the said *William*; and afterwards, to wit, on the said 28th Day of *October* in the Year last aforesaid, upon Sight of the said first Bill of Exchange, he the said *Alexander*, at *London* aforesaid in the Parish and Ward aforesaid, accepted the said Bill of Exchange for the Payment of the said 120 Pieces of Gold, and assumed upon himself, as the said *William* by the Declaration aforesaid above hath supposed; by reason of which Premises, and by Force of the Statute in that Case made and provided, the said first Bill of Exchange by him the said *Alexander* as aforesaid accepted, and the Acceptance thereof, and the Promise and Undertaking of him the said *Alexander*, by him the said *Alexander* as aforesaid made, became and were, and now are, void and of no Force in Law; and this he is ready to verify: Wherefore he prays Judgment, if he by Virtue of the Bill of Exchange aforesaid by the aforesaid Lord *Chandois*, against the Form of the Statute aforesaid as aforesaid given and made, and by him the said *Alexander* in Form aforesaid accepted, ought to be charged, &c. And the said *William* saith, that he by any Thing by the said *Alexander* above in Pleading alledged, as to the first Promise and Undertaking aforesaid, ought not to be barred from having his said Action thereof against him the said *Alexander*, because he saith, that the Plea aforesaid by the said

said *Alexander* in Manner and Form aforesaid above pleaded, and the Matter in the same contained, are not sufficient in Law to preclude him the said *William* from having his said Action thereof against the said *Alexander*; to which said Plea he the said *William* hath no Necessity, nor is he bound by the Law of the Land in any Manner to answer; and this he is ready to verify: Wherefore for want of a sufficient Answer in this Behalf, he the said *William* prays Judgment and his Damages, by occasion of the Non-performance of the said first Promise and Undertaking, to be adjudged to him, &c. And for Cause of Demurrer in Law in this Behalf, according to the Form of the Statute in that Case made and provided, he the said *William* sheweth, and to the Court here demonstrates these Causes following, that is to say, that the Plea aforesaid amounts only to the General Issue, and also is double, perplexed, uncertain, and wants Form, and also is no Answer to the Declaration aforesaid. And the said *Alexander* saith, that the Plea aforesaid by him the said *Alexander*, as to the first Promise and Undertaking in Manner and Form aforesaid above pleaded, and the Matter in the same contained, are good and sufficient in Law to bar him the said *William* from having his said Action thereof against him the said *Alexander*; which said Plea, and the Matter in the same contained, he the said *Alexander* is ready to verify and prove, as the Court, &c. And because the said *William* hath not answered to that Plea, nor hitherto in any Manner denied it, he the said *Alexander*, as before, prays Judgment, and that the said *William* may be barred from having his said Action thereof against him the said *Alexander*, as to the said first Promise and Undertaking, &c. But because the Court of the said Lord the King now here is not yet advised of their Judgment to be given of and upon the Premises, Day thereupon is given to the Parties aforesaid before the Lord the King at *Westminster* until ——— next after ——— to hear their Judgment of and concerning the Premises, for that the Court of the said Lord the King is not yet, &c. And as well to try the Issue aforesaid between the Parties aforesaid above joined by the Country to be tried, as to enquire what Damages the said *William Hussy* hath sustained by occasion of the Premises aforesaid, whereupon the Parties aforesaid have put themselves upon the Judgment of the Court, if Judgment thereupon shall happen to be given for the said *William* against the said *Alexander Jacob*, let a Jury thereupon come before the Lord the King at *Westminster* at the said Day, and who neither, &c. to take

Joinder in
Demurrer.

ed, as well to
try the Issue
as to enquire
of Damages if
Judgment be
for Plaintiff
on the De-
murrer.

PLEADINGS TO THE CASES.

Cognizance, &c. because as well, &c. The same Day is given to the Parties aforesaid there, &c.

Pleas before the Lord the King at Westminster of the Term of Saint Hilary in the sixth Year of the Reign of the Lord William the Third, King of England, &c. Roll 729.

Leigh against Brace. 2 Ld Raym. 101.

Count in
Ejectment.

Worcestershire, (to wit) **B**E it remembered, that on *Wednesday* next after eight Days of Saint Hilary in this same Term before the Lord the King at Westminster came *George Leigh* by *Thomas Callow* his Attorney, and brought here into the Court of the said Lord the King then there his certain Bill against *Samuel Brace*, in Custody of the Marshal, &c. of a Plea of Trespass and Ejectment; and there are Pledges of prosecuting, to wit, *John Doe* and *Richard Roe*; which said Bill follows in these Words, (to wit) *Worcestershire*, (to wit) *George Leigh* complains of *Samuel Brace*, in Custody of the Marshal of the *Marshalsea* of the Lord the King, being before the King himself, for that, to wit, that whereas one *John Cookes* on the first Day of *October* in the 6th Year of the Reign of the Lord *William* the now King and Lady *Mary*, late Queen of *England*, &c. at the Parish of *Bromsgrove* in the County aforesaid, demised, granted and to Farm lett to the aforesaid *George* one Messuage, 30 Acres of Land, 10 Acres of Meadow and 20 Acres of Pasture, with the Appurtenances, situate, lying and being in the Parish of *Bromsgrove* aforesaid in the County aforesaid; To have and to hold the Tenements aforesaid, with the Appurtenances, to him the said *George* and his Assigns, from the Feast Day of Saint *Michael* the Archangel then last past unto the full End and Term of seven Years from thence next following and fully to be compleat and ended; by Virtue of which said Demise the said *George* entered into the Tenements aforesaid, with the Appurtenances, and was possessed thereof until the aforesaid *Samuel* afterwards, to wit, on the same first Day of *October* in the 6th Year aforesaid, with Force and Arms into the Tenements aforesaid, with the Appurtenances, in and upon the Possession of him the said *George* entred thereupon, and him the said *George* from his Farm aforesaid, his said Term thereof not being ended, ejected, expelled and removed, and him the said *George* from his Possession aforesaid thereof kept out, and yet keeps out, and other Wrongs to the said *George* then and there did, against the Peace of the said Lord

Lord the now King and the late Lady the Queen, and to the Damage of him the said George of ten Pounds; and thereupon he brings Suit, &c.

And the said Samuel by John Hancocks his Attorney comes Not guilty. and defends the Force and Injury when, &c. and saith that he is not guilty thereof; and of this he puts himself upon the Country; and the said George likewise: Therefore let a Jury come before the Lord the King at *Westminster* on *Tuesday* next after eight Days of the Purification of the Blessed Virgin Mary; and who neither, &c. to take Cognizance, &c. because as well, &c. The same Day is given to the Party aforesaid there, &c. Afterwards the Process thereupon is continued between the Parties of the Plea aforesaid by the Jury being thereupon respited between them before the Lord the King at *Westminster* until *Wednesday* next after fifteen Days of *Easter* from thence next following, unless the Justices of the Lord the King assigned to take the Assizes in the County aforesaid, shall first come on *Saturday* the 2d Day of *March* at *Worcester* in the County aforesaid, by form of the Statute, &c. for want of Jurors, &c. At which Day before the Lord the King at *Westminster* cometh the said George by his said Attorney, and the said Justices before whom, &c. have sent here their Record had before them in these Words, (to wit) Afterwards on the Day and at the Place within contained, before *Giles Eyre*, Knt. one of the Justices of the Lord the King, assigned to hold Pleas before the King himself, and *Thomas Breton*, Esq; to him the said *Giles Eyre* and *William Gregory*, Knt. another Justice of the said Lord the King, assigned to hold Pleas before the King himself, Justices of the said Lord the King assigned to take the Assizes in the County of *Worcester*, by Form of the Statute, &c. for this Time associated, the Presence of the said *William Gregory* not being expected, by Virtue of the Writ of the Lord the King of *Si non omnes*, &c. come as well the within named *George Leigh*, as the within written *Samuel Brace*, by their Attornies within contained; and the Jurors of the Jury, whereof Mention is within named, being called come, who being chosen, tried and sworn to speak the Truth concerning the Matters within contained, say upon their Oath, that one *Walter Brace* was seised of the Tenements in the Declaration within mentioned, in his Demesne as of Fee; and being so seised thereof, the said *Walter Brace*, before the said Time when, &c. to wit, on the 25th Day of *July* in the 20th Year of the Reign of the Lord *James* the First, late King of *England*, &c. by his certain Charter, sealed

Nisi prius.

Postea.

Special Verdict.

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with the Seal of him the said *Walter*, and to the Jury afore-
 said in Evidence shewn, the Date whereof is the same Day
 and Year, enfeoffed *Thomas Wilkes* and *Thomas Flavell* of
 and in the Tenements aforesaid, with the Appurtenances, to
 have and to hold to them the said *Thomas* and *Thomas* and
 their Heirs, to the Uses in the said Charter specified, the
 Tenor of which said Charter follows in these Words, To
 all Christian People to whom this present Writing shall
 come, *Walter Brace* of *Forkbury* in the Parish of *Broms-*
grove in the County of *Wigorn*, Yeoman, sendeth, greet-
 ing: Know ye, That I the said *Walter Brace*, for the na-
 tural Love and Affection that I bear unto my Son *Thomas*
Brace, and for divers other Considerations me especially
 moving, have given, granted, enfeoffed and confirmed,
 and by these Presents do give, grant, enfeoff and confirm
 unto *Thomas Wilkes* of *Forkbury* aforesaid, Yeoman, and
 unto *Thomas Flavell* of *Bromsgrove* aforesaid, Clerk, their
 Heirs and Assigns, all that Dwelling-House or Tenement,
 with the Appurtenances, which I the said *Walter Brace*
 purchased of *Stephen Dipple* of *Bromsgrove* aforesaid, and
 is situate in the High Street of *Bromsgrove*, between the
 Land of *Edward Scabright*, Esq; and the Lands of *Gilbert*
Butler, Gent. and now in the Tenure or Occupation of
Walter Rose; and also one other House or Cottage, with
 the Appurtenances, situate and being in *Forkbury* aforesaid,
 wherein *Gilbert Westley* now dwelleth, together with the
 Close wherein the said Cottage standeth, containing by Es-
 timation one Acre and a half, or thereabouts, be the same
 more or less; one other Close of Pasture called by the
 Name of *Whern's Close*, containing by Estimation three A-
 cres or thereabouts; one other Close of Pasture, called by
 the Name of *Woodsell*, containing by Estimation five Acres or
 thereabouts; two other Closes called the *Slade Crofts*, con-
 taining by Estimation six Acres, or thereabouts; one Day
 Mowth of Meadow Ground lying in *Long Meadow* next
 unto the Estate there, and two fleeting Acres lying in *Broad*
Meadow, with all the Ways, Waters, Woods, Underwoods,
 Commons, Profits, Commodities, Advantages and Here-
 ditaments whatsoever unto the said Premises, and every
 Part and Parts thereof, belonging or in any wise appertain-
 ing; all which said Premises are situate, lying and being
 in the said Parish of *Bromsgrove* and County of *Wigorn*, to
 have and to hold the said Houses or Tenements, Lands,
 and all and singular other the Premises, with the Appur-
 tenances, and every Part thereof, to the said *Thomas Wilkes*
 and *Thomas Flavell*, their Heirs and Assigns, to the Uses,
 Intents

Intents and Behoofs herein after by these Presents mentioned and declared, and to no other Use, Intent or Purpose, that is to say, to the Use and Behoof of me the said *Walter Brace*, for and during my natural Life, and after the Decease of me the said *Walter Brace*, to the Use and Behoof of the aforesaid *Thomas Brace* my Son, and his Heirs for ever; and for Default of Issue of the Body of the said *Brace*, then to the Use and Behoof of the right Heirs of me the said *Walter Brace* for ever, to be holden of the Chief Lord or Lords of the Fee or Fees of the Premisses, by the Rents and Services thereof first due and of Right accustomed; and I verily the said *Walter Brace* and my Heirs the said Houses or Tenements, Lands, and all and singular other the Premisses, with the Appurtenances, and every Part and Parcel thereof, unto the said *Thomas Wilkes* and *Thomas Flavell* and their Heirs, shall and will warrant and for ever defend by these Presents. In Witness whereof I the said *Walter Brace* unto this my present Writing indented have set my Hand and Seal the 25th Day of *July* in the Reign of our Sovereign Lord King *James*, by the Grace of God, of *England, France and Ireland* King, Defender of the Faith, &c. the twentieth, and of *Scotland* the Fifty-fifth. *Annoque Domini* 1622. By Virtue whereof, and also by Force of the Act of Parliament for transferring of Uses into Possession made and provided, the said *Walter* was seised of the Premisses in the said Charter mentioned, being the Premisses aforesaid in the Declaration aforesaid specified, as of his Freehold, for the Term of his Life, the Remainder thereof to the said *Thomas Brace* belonging, as the Law requireth. And the said Jurors further upon their Oath say, that the aforesaid *Walter Brace* afterwards and before the said Time when, &c. died, and that the said *Thomas Brace*, the Son of him the said *Walter*, entred into the Tenements in the Declaration within written mentioned, and was seised thereof, as the Law requireth; and that he the said *Thomas Brace* being so seised thereof, in due Manner and Form made his last Will and Testament in Writing on the 16th Day of *April* in the 33d Year of the Reign of *Charles* the Second, late King of *England*, &c. which said Will follows in these Words: In the Name of God, *Amen*, the 16th Day of *April* in the 33d Year of the Reign of our Sovereign Lord *Charles* the Second, by the Grace of God; of *England, Scotland, France and Ireland* King, Defender of the Faith, &c. *Annoque Domini* 1681. I *Thomas Brace* of *Forkbury* in the Parish of *Bromsgrove* in the County of *Wigorn*, Yeoman, being weak of Body, but

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but of sound and perfect Memory and Understanding, Thanks be to God, calling to Mind the incertain State of this Life, and being desirous to settle Things in order for the leaving the World, I having lived in the Enjoyment thereof till a very considerable Age, do make this my last Will and Testament in Manner following, revoking by these Presents all and every other Testament or Testaments, Will and Wills heretofore by me made, either by Word or Writing, and this to be taken only for my last Will and Testament. First, I bequeath my Soul unto God my Creator, and to Jesus Christ my Redeemer, and my Body to the Earth, from whence it was taken, to be decently buried in such Christian Manner as to my Executor herein after named shall be thought most convenient, there to rest until my Soul and Body shall meet again and be joined together at the Resurrection; and touching such Temporal Estate as God has been pleased to bestow upon me, I do order, give and bequeath the same in Manner following: *Imprimis*, I do hereby give and devise unto my Son *Samuel Brace*, during the Term of his natural life, eight Pounds a Year of lawful Money of *England*, to be paid him Quarterly from the Time of my Decease, by my Executor herein after mentioned, he my said Son *Samuel* permitting and suffering *William Fowkes* and *Jonathan Wall*, their Executors, Administrators and Assigns, peaceably and quietly to hold and enjoy the Lands and Tenements and Premises to them by me severally leased, at and under the Covenants specified in their several Leases; but if he molest or hinder the said *Jonathan Wall* and *William Fowkes* of their quiet enjoying the Premises, or any Part thereof, to them by me devised, then my Will is, that my said Son *Samuel* have four Pounds a Year only during his Life, paid him Quarterly by my Executor, in full Discharge and Satisfaction of the said eight Pounds a Year. *Item*, I give and bequeath unto my Daughter *Elizabeth Brace* three hundred Pounds of like Money of *England* as followeth, (*viz.*) two hundred Pounds within a Year, and one hundred Pounds more, the remaining Part of the said three hundred Pounds, within two Years after my Decease, if she so long live, or bear any Issue of her Body, with all my Goods that shall be in my House at *Whern's Ash* at my Decease. *Item*, I give to my Grandson *Henry Cooks* during his natural Life, all that my Messuage or Tenement in *Forkbury*, with two Acres of Land to the same belonging, in the Possession of one *William Perkes*, and four more Acres of Land to the same adjoining, in the Possession of one *William Oxford*;

Oxford; the Rents and Profits of the said Messuage and several Parcels of Land to be received and enjoyed by my Executors till my said Grandchild shall attain to the Age of 21 Years, for the Maintenance and Education of my said Grandchild. *Item*, I give and devise to my Grandchildren *Mary* and *Hannab Cooks* all those my two Closes of Land in *Catfill*, adjoining to the common Field there called *Intall Field*, containing by Estimation about four Acres, and three several Parcels of Land in *Intall Field*, containing by Estimation three Acres. And lastly, I give and devise unto *John Cooks* my Son-in-Law, whom I make Executor of this my last Will and to his Heirs on the Body of my Daughter *Rebecca* begotten, or to be begotten, all my Estate, Lands, Tenements and Houses whatsoever in *Forkbury* and *Catfill* in the said Parish of *Bromsgrove* and County of *Worcester*, and not herein before devised, and the Reversion of the said Messuage and Lands herein before bequeathed, unto my said Grandchild *Henry Cooks*, from and after his Decease, paying the Legacies and Annuities in this my Will comprised, &c. And the said Jurors further upon their Oath say, that the said *Thomas Brace* afterwards died seised of the Tenements aforesaid, with the Appurtenances, as aforesaid; and that the Tenements aforesaid, with the Appurtenances, in the Declaration aforesaid specified, and the Tenements aforesaid in the Will aforesaid before recited, and by the same expressed to be devised to the aforesaid *John Cooks* in Possession, are the same Tenements, with the Appurtenances, and not others or divers; and that the said *John Cooks*, after the Death of him the said *Thomas Brace*, into the Tenements aforesaid, being the Tenements in question, entered by Colour of the Will aforesaid, and was thereof seised, as the Law requireth. And the said Jurors upon their Oath further say, that the said *John Cooks* after the Death of the said *Thomas Brace* paid as well all and singular the Legacies and Annuities in the same Will mentioned and comprised, at such Times, and in the Manner and Form, as in the same Will is directed; as all the just Debts and Funeral Expences of the said *Thomas Brace*, according to the true Intention of the said Will. And the Jurors aforesaid upon their said Oath further say, that the within named *Samuel Brace* the now Defendant is the Son and Heir of the Body of the said *Thomas Brace*; and that the said *Samuel Brace*, after the Death of the said *Thomas* his Father, entered into the Tenements aforesaid, with the Appurtenances, and was seised thereof, as the Law requireth. [And the

PLEADINGS TO THE CASES.

the aforesaid *John Cooks* afterwards and before the said Time when, &c. to wit, on the within written first Day of *October* in the 6th Year of the Reign of the Lord *William* now King of *England*, and of the Lady *Mary*, late Queen of *England*, &c. at the Parish of *Bromsgrove* aforesaid within written in the County aforesaid, into the Tenements aforesaid, with the Appurtenances, entred, and then and there demised, granted and to Farm lett to the said *George* the Tenements aforesaid, with the Appurtenances, to have and to hold the Tenements aforesaid, with the Appurtenances, to the said *George* and his Assigns, from the Feast Day of Saint *Michael* the Archangel then last past unto the full End and Term of seven Years from thence next following and fully to be compleat and ended: By Virtue of which said Demise he the said *George* entred into the Tenements aforesaid, with the Appurtenances, and was thereof possessed, until the said *Samuel* the Defendant afterwards, to wit, on the same first Day of *October* in the 6th Year aforesaid into the Tenements aforesaid, with the Appurtenances, in and upon the Possession of him the said *George* thereupon entred, and him the said *George* from his Farm aforesaid, his Term not being yet ended, ejected, expelled and removed, and him the said *George* from his Possession aforesaid thereof kept out, and yet keeps out: But whether upon the whole Matter aforesaid, by the Jurors aforesaid in Form aforesaid found, the said *Samuel Brace* the now Defendant is guilty of the Trespass and Ejection within written, in Manner and Form as the said *George* within complains against him, or not, the Jurors aforesaid are wholly ignorant, and thereupon pray the Advice and Consideration of the Court, &c. And if, upon the whole Matter aforesaid by the Jurors aforesaid in Form aforesaid found, it shall seem to the Court of the Lord the King here that the said *Samuel Brace* the now Defendant is guilty of the Trespass and Ejection within written, in Manner and Form as the said *George* within complains against him, then the said Jurors further upon their Oath say, that the said *Samuel Brace* is guilty of the Trespass and Ejection within written, in Manner and Form as the said *George Leigh* within complains against him; and they assess the Damages of him the said *George Leigh*, by the occasion within written, besides his Costs and Charges by him about his Suit in this Behalf laid out, to six Pence, and for those Costs and Charges to 40 s. But if, upon the whole Matter aforesaid by the Jurors aforesaid in Form aforesaid found, it shall seem to the Court here that the aforesaid *Samuel Brace* the now Defendant is not

not guilty of the Trespass and Ejectment within written, in Manner and Form as the said *George* within complains against him, then they said Jurors further say upon their said Oath, that the said *Samuel Brace* is not guilty of the Trespass and Ejectment in the Declaration within written specified, as the said *Samuel Brace* within for himself in pleading hath alledged: And because the Court of the Lord the King now here is not yet advised of giving their Judgment of and upon the Premises, Day is thereupon given to the Parties aforesaid before the Lord the King at *Westminster* until ——— next after ——— to hear their Judgment of and upon the Premises, for that the Court of the said Lord the King now here thereof is not yet, &c.

Trinity Term in the eighth Year of King William the Third.
Roll 348.

Markes against Marryott. Ld. Raym. 114.

Tempest.

Surrey, (to wit) *SIMON Marryott* the Elder, late of *Chidingfold* in the County aforesaid, Gent. Debt on a Bond.

otherwise called *Simonem Marryott Seniore de Chidingford in Com' Surr', Gen*, was summoned to answer to *William Markes* of a Plea that he render to him two hundred Pounds, which he oweth to him, and unjustly detains, &c. And whereupon the said *William* by *John Tanner* his Attorney saith, that whereas the said *Simon* on the second Day of *July* in the seventh Year of the Reign of the Lord the now King, at *Hastemere* in the County aforesaid, by his certain Writing obligatory, granted himself to be held and firmly bound to the aforesaid *William* in the said two hundred Pounds, to be paid to him the said *William*, when he should be thereunto requested: Nevertheless the aforesaid *Simon*, although often requested, hath not rendered the said two hundred Pounds to him the said *William*, but to render the same to him hath hitherto refused, and yet doth refuse, whereupon he saith that he is injured, and hath Damage to the Value of ten Pounds; and thereupon he brings Suit, &c. And he brings here into Court the Writing aforesaid, which testifies the Debt aforesaid in Form aforesaid, the Date whereof is the Day and Year above-written.

And the aforesaid *Simon* by *William Rycroft* his Attorney Bar. comes and defends the Force and Injury when, &c. and prays Oyer of the Writing obligatory aforesaid, and it is read

Oyer of Con-
dition to per-
form an A-
ward.

read to him, &c. and he also prays Oyer of the Condition of the same Writing, and it is read to him in these Words: The Condition of this Obligation is such, that if the above-bounden *Simon Marryott*, his Heirs, Executors and Administrators, for his and their Parts and Behalves, do and shall in all Things well and truly stand to, obey, abide, perform, fulfil and keep the Award, Order, Arbitrament, final End and Determination of *Roger Shorter* of *Pitfield* in the Parish of *Frinsbam* in the County of *Surrey*, Gent. and *Edward Holt* of *Cbiddingfold* in the County aforesaid, Gent. Arbitrators indifferently elected and named, as well on the Part and Behalf of the above-bound *Simon Marryott*, as of the above-named *William Markes*, to arbitrate, award, order, judge and determine of and concerning all and all Manner of Action and Actions, Cause and Causes of Action, Suits, Accounts, Bills, Bonds, Spécialties, Judgments, Executions, Extents, Quarrels, Controversies, Trespasses, Damages and Demands whatsoever at any Time heretofore had, made, moved, brought, commenced, sued, prosecuted, done, suffered, committed or depending by or between the said Parties, or either of them, so as the said Award be made in Writing or otherwise, and ready to be delivered or given up to the said Parties, or either of them, as shall desire the same, on or before the 14th Day of *August* next ensuing the Date of these Presents, that then this Obligation shall be void and of none Effect, or else shall be and remain in full Force and Virtue; which being read and heard, he the said *Simon* saith, that the said *William* ought not to have his Action aforesaid against him, because he saith that the aforesaid Arbitrators, after the making of the Writing aforesaid, and on or before the said 14th Day of *August*, in the Condition aforesaid above specified, made no Award, Order, Arbitrament, final End or Determination between the Parties aforesaid, of and upon the Premises in the Condition aforesaid mentioned, according to the Form and Effect of that Condition; and this he is ready to verify: Wherefore he prays Judgment if the aforesaid *William* ought to have his Action aforesaid thereof against him, &c.

No Award.

Replication.
An Award
made.

And the aforesaid *William Markes* saith, that he by any Thing before alledged ought not to be barred from having his said Action, because he saith, that the aforesaid Arbitrators in the Condition aforesaid above-named, after the making of the Writing obligatory aforesaid, and before the said 14th Day of *August* in the said Condition mentioned, that

that is to say, on the 13th Day of *August* in the seventh Year of the Reign of the said Lord the now King above-said, taking upon themselves the Burthen of the Arbitrament, Order and Determination aforesaid of and upon the Premises in the said Condition above specified, at *Hastmere* aforesaid in the said County of *Surry*, made their certain Award of and upon the same Premises, and thereby ordered and arbitrated between him the said *William Markes* and the said *Simon Marryott* of and upon the same Premises in Form following, that is to say, That he the said *William Markes*, his Executors, Administrators or Assigns, should pay or cause to be paid to the said *Simon Marryott*, his Executors, Administrators or Assigns, at or in the then Dwelling-house of *John Waterford*, bearing the Sign of the Eagle in *Hastmere* aforesaid, the full Sum of 31 *l.* 15 *s.* of lawful Money of *England*, on or upon the 30th Day of *September* then next following; which said Sum the said Arbitrators arbitrated and determined should be in full Satisfaction of all Actions, Suits, Dues and Demands from the said *William Markes* to the said *Simon Marryott*: And farther, the said Arbitrators thereby ordered and arbitrated that the said *Simon Marryott*, his Heirs or Assigns, should deliver up, or cause to be delivered up, to the said *William Markes*, his Heirs or Assigns, upon the Payment of the Money aforesaid, upon the said 30th Day of *September* then next following, quiet and peaceable Possession of all those Messuage or Tenement, Barns, Lands, Tenements and Hereditaments, with the Appurtenances, called or known by the Name of *Clamerbill*, situate, lying and being in the Parish of *Cbiddingfold* in the County aforesaid; which said Premises then were in the Possession of the aforesaid *Simon Marryott*, or his Assigns, and an intailed Deed of Settlement bearing Date the 12th Day of *December* in the Reign of King *James* the First, made of the Premises to the aforesaid *William Markes*, by the Ancestors of him the said *William*, and all others the Deeds and Writings which he the said *Simon Marryott* had in his Hands, Custody or Possession, which did belong to the aforesaid Lands, or any other Lands or Tenements of the said *William Markes*, and also all Bonds, Assignments of Bonds and Judgments which he the said *Simon Marryott* had upon the said *William Markes*; and they the said Arbitrators thereby further ordered and arbitrated, that he the said *Simon Marryott*, upon Payment of the Money to him as aforesaid, and upon Request thereupon made, should seal and deliver as his Deed to the aforesaid *William Markes*, or to his Use, a general

PLEADINGS TO THE CASES.

Breach assigned.

neral Release of all Actions, Suits, Dues and Demands, from the Beginning of the World until the twelfth Day of the then Instant *August*, and also a Warrant of Attorney to acknowledge Satisfaction upon Record in the Courts of the Lord the King at *Westminster*, upon all such Judgments as he the said *Simon Marryott* had against the said *William Markes*. And also the said Arbitrators thereby further ordered and arbitrated, that the aforesaid *William Markes*, upon the Delivery of peaceable Possession of all and singular the Lands, Tenements, Deeds, Writings, and of all and singular other the Premises to him as aforesaid, should seal and deliver as his Deed to the said *Simon*, or to his Use, a like general Release of all Actions, Suits, Dues and Demands from the Beginning of the World until the 12th Day of the then Instant *August* then past; of which said Arbitrament the aforesaid *Simon* afterwards, to wit, on the aforesaid 14th Day of *August* in the said Condition mentioned, at *Haslemere* aforesaid, had Notice: And the said *William Markes* saith, that he the said *William Markes*, after the Making of the Arbitrament aforesaid, to wit, on the said 30th Day of *September* in the 7th Year aforesaid, at the said Dwelling-house of the said *John Waterford* in *Haslemere* aforesaid, for the Space of six Hours next before the Sun-setting of the same Day, and at the Sun-setting of the same Day was ready, and offered to pay to the said *Simon* the full Sum aforesaid of 31 *l.* 15 *s.* of lawful Money of *England*, which the Arbitrators aforesaid arbitrated to be paid to him the said *Simon* by the said *William Markes*, upon the same Day as aforesaid, according to the Form and Effect of the Arbitrament aforesaid; and that neither the said *Simon*, nor any other Person on the Behalf of him the said *Simon*, then and there was ready to receive of the said *William Markes* the said 31 *l.* 15 *s.* and that the said *William* after the said 30th Day of *September* hitherto hath been, and yet is ready to pay to the said *Simon* the said 31 *l.* 15 *s.* And further the said *William Markes* in Fact saith, that the said *Simon* hath not delivered up, or caused to be delivered up to the aforesaid *William Markes*, upon the said 30th Day of *September* in the Year aforesaid, or at any Time hitherto, quiet and peaceable Possession of the Messuage or Tenement, Barns, Lands and Hereditaments, with the Appurtenances, called or known by the Name of *Clamerbill*, situate in the said Parish of *Cbiddingfold*, according to the Form and Effect of the said Arbitrament; and this he is ready to verify: Wherefore he

he prays Judgment and his Debt aforesaid, together with his Damages, by occasion of the Detention of that Debt, to be adjudged to him, &c.

And the said *Simon* said that the Plea aforesaid of the said Demurrer to *William* above pleaded in reply, and the Matter in the same the Replication contained, are not sufficient in Law for him the said *William* to have his said Action to be maintained against him; and that he to that Plea in Manner and Form aforesaid pleaded hath no Necessity, nor is he bound by the Law of the Land to answer; and this he is ready to verify: Wherefore for want of a sufficient Replication of him the said *William* in this Behalf, he the said *Simon* prays Judgment, and that the said *William* may be barred from his Action aforesaid, &c.

And the said *William Markes* since he hath above alledged in reply a sufficient Plea and Matter in Law to maintain his said Action against the said *Simon*, which he is ready to verify; which said Plea, and the Matter in the same contained, the said *Simon* hath not denied, nor in any Manner hath answered to it, but wholly refuses to admit the Averment aforesaid, as before prays Judgment, and his Debt aforesaid, together with his Damages, by occasion of the Detention of that Debt, to be adjudged to him, &c.

Joinder in Demurrer.

Easter Term in the eighth Year of King William the Third.
C. B. Roll. 579.

Searle against Darford. 1 Ld. Raym. 120.

Huntingdonshire, (to wit) **J**OHN Darford late of *Hamington* in the County aforesaid, Butcher, was attached to answer to *George Searle* of a Plea, wherefore with Force and Arms upon him the said *George* at *Hamerton* he made an Assault, and beat, wounded and ill-treated him, so that his Life was despaired of, and other Wrongs to him did, to the great Damage of him the said *George*, and against the Peace of the Lord the now King, &c. And whereupon the said *George* by *Jonathan Nichols* his Attorney complains, that the aforesaid *John* on the 20th Day of *October* in the 7th Year of the Reign of the Lord the now King, with Force and Arms, &c. to wit, with Swords, Staves and Knives, upon him the said *George* at *Hamerton* aforesaid made an Assault, and beat, wounded and ill treated him, so that his Life was despaired of, and other Wrongs, &c. and against the Peace, &c. and whereupon he saith that he is injured, and hath Damage to the Value of 40*l.* and thereupon he brings Suit, &c.

Assault and Battery.

PLEADINGS TO THE CASES.

Not Guilty as
to the Force,
Ec. and
wounding.

Justification
as to the Resi-
due in De-
fence of his
Possession in a
Close in Co-
mington.

Traverse that
he is guilty at
Hamerton.

Replication.

And the said *John Darford* by *John Crane* his Attorney comes and defend the Force and Injury when, Ec. and as to the coming with Force and Arms, and also the wounding aforesaid, saith, that he is in no wise guilty thereof, as the said *George* above complains thereof against him; and of this he puts himself upon the Country; and the said *George* likewise. And as to the Residue of the Trespass and Assault above supposed to be done, he the said *John* saith that the said *George* ought not to have his said Action thereof against him, because he saith that before the said Time when the said Trespass and Assault are supposed to be done, and at the same Time when, Ec. he the said *John Darford* was and yet is lawfully possessed of one Close called *Little Ale*, with the Appurtenances, in *Comington* in the County of *Huntingdon* aforesaid; and that before the said Time when, Ec. to wit, in the Day and Year aforesaid in the Declaration aforesaid above specified, the aforesaid *George* of his own Wrong, and against the Will of him the said *John Darford*, into that Close, in and upon the Possession of him the said *John* thereof entred, and with a certain Waggon and certain Horses drawing that Waggon through and over the said Close would and endeavoured to pass, subverting the Soil of the said Close, with the Wheels of the said Waggon, and doing Damage thereby to him the said *John*; upon which he the said *John Darford* at the said Time when, Ec. came to the said *George*, then being in the said Close as aforesaid, and then and there requested him the said *George* that he would depart out of the said Close, and not do any further Damage in that Close; and the said *George* would not depart out of the said Close, and refused to depart, and would not further recede therefrom, wherefore he the said *John* then and there gently laid his Hands upon him the said *George*, to cause him the said *George* to depart from the Close aforesaid, which is the same Residue of the Trespass and Assault aforesaid whereof the said *George* himself now above complains; without this, that the said *John Darford* is guilty of the said Trespass and Assault at *Hamerton* aforesaid, or any where else out of the said Close in *Comington* aforesaid; and this he is ready to verify: Wherefore he prays Judgment if the aforesaid *George* ought to have his said Action thereof against him, Ec.

And the said *George*, as to the said Residue of the Trespass and Assault aforesaid above as aforesaid done, saith, that he, by any Thing in the said Plea before alledged, ought not to be barred from having his said Action thereof,

of, because he saith, that the said Entry of him the said *John* into the Close aforesaid, with the Waggon and Horses aforesaid drawing that Waggon, at the said Time when, &c. was in, by and through a certain Way in the same Close * used and enjoyed by Permission ; and that he the said *George* was then and there in the same Way, and not out of that Way, with the Waggon and Horses aforesaid drawing that Waggon, peaceably passing through, until the said *John Darford*, moved by a sudden Passion, then and there, to wit, the Day and Year above said in the Declaration aforesaid above specified, of his own Wrong upon him the said *George* in the said Close at *Comington* aforesaid made an Assault, and him the said *George* with a certain great Stick then and there violently and vehemently struck upon his Head, and with divers Strokes beat and ill treated him, so that his Life was despaired of, which is the same Residue of the Trespass and Assault whereof he above complains ; without this, that the said *John Darford* then and there gently laid his Hands upon him the said *George*, as the said *John* in pleading thereof hath alledged ; and this he is ready to verify : Wherefore since the said *John* hath acknowledged the Residue of the Trespass and Assault aforesaid, he the said *George* prays Judgment and his Damages, by occasion of the Residue of the same Trespass and Assault aforesaid, to be adjudged to him, &c.

Traverse after
a Traverse.

And the said *John* saith, that the said Plea of the said *Demurre*
George above pleaded in reply, and the Matter in the same contained, are not sufficient in Law for him the said *George* to have his said Action to be maintained against him the said *John* ; and that he, to that Plea in Manner and Form aforesaid pleaded, hath no Necessity, nor is bound by the Law of the Land to answer ; and this he is ready to verify : Wherefore for want of a sufficient Plea of him the said *George* in this Behalf, he the said *John* as before prays Judgment, and that the aforesaid *George* may be barred from having his said Action against him the said *John*, &c. And for Cause of this Demurrer in Law, he the said *John* sheweth to the Court here, and saith, that the said Plea or Replication of the said *George* is double or triple, to wit, in justifying (although insufficient) the En-

Cause of De-
murrer.

* Nota ; The Entry is in these Words, *Ex permissione usitat' & gavis'* ; but *Quare*, whether it was not a Way by Prescription, as the Report says it was.

PLEADINGS TO THE CASES.

ty of him the said *George* into the Close of him the said *John* afore said, and also in assigning another Assault and Beating than he the said *John* hath above alledged, and also in traversing the Assault and Beating by him the said *John* above acknowledged; and also for that the Traverse afore said is wholly superfluous and redundant, and the said Replication is uncertain, and wants Form.

Joinder in
Demurrer.

*Curia ad-
visare vult.*

And the said *George* since he sufficient Matter in Law to have his said Action to be maintained against the said *John* hath above in reply alledged, which he is ready to verify, which said Matter the said *John* hath not denied, nor in any Manner answered it, as before prays Judgment and his Damages, by occasion of the said Residue of the Trespass and Assault afore said, to be adjudged to him, &c. And because the Justices here will advise themselves of and upon the Premises before they give Judgment thereupon, Day is given to the Parties afore said here until in eight Days of the Holy Trinity, to hear their Judgment thereupon, for that the said Justices are not thereupon yet, &c.

Trinity Term in the eighth Year of King William the third.
Roll. 1606.

Nevill against Peckham. 1 Ld. Raym. 121.

Cooke.

Trespass for
breaking
Plaintiff's
Close called
Hornetbill in
the Parish of
*Rumboldf-
week.*

Treading
down the
Grass,
depasturing
the Grass.
and for cha-
sing, taking
and impound-
ing Plaintiff's
Sheep.

Suffex, (to wit) **W**ILLIAM *Peckham* late of *Rumboldfweek* in the County afore said, Gent. and *John Peckham* late of *Rumboldfweek* afore said in the County afore said, Gent. were attached to answer to *Stephen Nevill* of a Plea, wherefore with Force and Arms the Close of him the said *Stephen Nevill*, at the Parish of *Rumboldfweek*, they broke and entred, and his Grass to the Value of 20 s. there lately growing with their Feet in walking they trod down and consumed, and other his Grass to the Value of 40 s. there lately growing with certain Cattle they depastured, trod down and consumed; and also the Sheep of him the said *Stephen* of the Price of 20 l. there lately found, without a reasonable Cause, the chased, took and impounded, and the same there so impounded, against the Law and Custom of *England*, they for a long Time detained, whereby these Sheep were very much worse: And also him the said *Stephen* from the quiet Possession and Occupation of his Close afore said (they falsely claiming Right and Title in the same Close) disturbed and hindred, and other Wrongs to him did, to the great Damage

PLEADINGS TO THE CASES.

117

Damage of him the said *Stephen*, and against the Peace of the Lord the now King, &c. And whereupon the said *Stephen* by *John Wakeford* his Attorney complains, that the said *William* and *John Peckbam* on the 14th Day of *December* in the 7th Year of the Reign of the Lord *William* the Third, now King of *England*, &c. with Force and Arms, &c. the Close of him the said *Stephen*, called *Hornetbill*, at the Parish of *Rumboldfweek*, they broke and entred, and his Grasse to the Value, &c. there lately growing with their Feet in walking trod down and consumed, and other his Grasse to the Value, &c. there lately growing with certain Cattle, to wit, with Horses, Oxen, Cows, Swine and Sheep they depastured, trod down and consumed; and also the Sheep, to wit, 27 Sheep of him the said *Stephen*, of the Price, &c. there lately found, without a reasonable Cause, they chased, took and impounded, and the same there so impounded, against the Law and Custom of *England*, they for a long Time, to wit, for the Space of 20 Hours then next following detained, whereby the said Sheep were very much worse; and also him the said *Stephen* from the quiet Possession and Occupation of his Close aforesaid (they falsely claiming Right and Title in the same Close) disturbed and hindred, and other Wrongs, &c. to the great Damage, &c. and against the Peace, &c. Whereupon he saith that he is injured, and hath Damage to the Value of 20*l.* and thereupon he brings Suit, &c.

And the said *William* by *Thomas Peckbam* his Attorney, Plea. and the said *John Peckbam* by *Thomas Peckbam*, who is admitted by the Court here to defend for the same *John*, by Attorney, who is within Age, as the Guardian of him the said *John*, the other by some and defend the Force and Injury when, &c. and as his Guardian. to the coming with Force and Arms, and also the whole Not guilty to Trespas aforesaid, except the chasing, taking and impounding of the Sheep aforesaid, say, that they are in no pass, except ife guilty thereof; and of this they put themselves upon the chasing the Country; and the said *Stephen* likewise: And as to the chasing, taking and impounding of the Sheep aforesaid above supposed to be done, they the said *William* and *John Peckbam* say, that the said *Stephen* ought not to have his said Action thereof against them, because they say that before the said Time when the said Trespas is supposed to be done, and also at the same Time when, &c. the said *William* was seised in his Demesne as of Fee of and in a certain Close of Land called the *New Orchard* in *Rumboldfweek* aforesaid: And because the said Sheep at the said Time when, &c. were in the said Close called the *New Orchard*, feeding on the Grasse there then growing, and doing

One pleads
by Attorney,
the other by
Guardian.
all the Trespas
except the chasing
and impounding
And as to that,
Defendants
justify for Damage-
feasant
in the New
Orchard.

PLEADINGS TO THE CASES.

And traverse
the Place in
the Declara-
tion.

ing Damage there, he the said *William* in his own Right, and the said *John Peckham* as the Servant of him the said *William*, and by his Command; at the said Time when, &c. took the Sheep aforesaid in the said Close called the *New Orchard*, feeding on the Grass then there growing, and doing Damage there in the Name of a Distress, and impounded them in a Pound Overt at *Rumboldswick* aforesaid, and detained the said Sheep in the Pound Overt aforesaid, as it was well lawful for them to do; without this, that the said *William* and *John Peckham* chased, took and impounded the said Sheep in the said Close called *Hornet-bill*, as the said *Stephen* above complains against them; and this they are ready to verify: Wherefore they pray Judgment if the said *Stephen* ought to have his said Action against them, &c.

Demurrer.

Cause of De-
murrer.

And the said *Stephen* saith, that the said Plea of the said *William* and *John Peckham*, as to the chasing, taking and impounding of the said Sheep above pleaded in Bar, and the Matter in the same contained, are not sufficient in Law to bar him the said *Stephen* from having his Action aforesaid against the said *William* and *John Peckham*, and that he to that Plea in Manner and Form aforesaid pleaded hath no Necessity, nor is bound by the Law of the Land to answer; and this he is ready to verify: Wherefore for want of a sufficient Plea of them the said *William* and *John Peckham* in this Behalf, he the said *Stephen* prays Judgment and his Damages, by the Occasion aforesaid, to be adjudged to him, &c. And for Cause of Demurrer in Law upon the said Plea, the said *Stephen*, according to the Form of the Statute in such Case made and provided, sheweth to the Court here the Causes following, that is to say, that the said Plea is uncertain, and wants Form; and the said *William* traverses Matter in that Plea which is not traversable.

Joinder in Demurrer

Michaelmas Term in the eighth Year of King William the Third. Roll 325. or 326.

Allen against Harris. 1 Ld. Raym. 122.

Winford.

Trover for a
Silk Waist-
coat.

Kent, (to wit) **WILLIAM Harris** late of *Nockholt* the County aforesaid, Yeoman, attached to answer to *John Allen* the Younger, of Plea of Trespass upon the Case, &c. And whereupon

The said *John* by *Henry Streatfield* his Attorney complains, that whereas the said *John* on the first Day of *December* in the 7th Year of the Reign of the Lord the now King, at *Chiddingstone* in the County aforesaid, was possessed of a Silk Waistcoat to the Value of 5 *l.* as of his own proper Goods and Chattels; and being so possessed thereof, casually lost the Goods and Chattels aforesaid out of his Hands and Possession: which said Goods and Chattels afterwards, to wit, the Day and Year aforesaid at *Chiddingstone* aforesaid, came to the Hands and Possession of him the said *William*, by finding: Nevertheless the said *William* knowing the Goods and Chattels aforesaid to be the Goods and Chattels of the said *John*, and to him the said *John* of Right to belong and appertain, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *John* of the Goods and Chattels aforesaid, hath not delivered the Goods and Chattels aforesaid (although often requested) to him the said *John*, but afterwards, to wit, on the first Day of *January* in the 7th Year of the Reign of the said Lord the now King at *Chiddingstone* aforesaid, converted and disposed of the Goods and Chattels aforesaid to his own proper Use, to the Damage of him the said *John* of ten Pounds; and thereupon he brings Suit, &c.

And the said *William* by *Edward Godjoll* his Attorney comes and defends the Force and Injury when, &c. and saith, that the said *John* ought not to have his said Action against him, because he saith, that well and true it is that he the said *William* hath converted and disposed of the said Silk Waistcoat, to the proper Use of him the said *William*, in Manner and Form as the said *John* by his said Declaration against him above supposes: But the said *William* further saith, that after the said Time when the Conversion of the Silk Waistcoat aforesaid is above supposed to be done, to wit, on the 10th Day of *January* in the 7th Year of the Reign of the said Lord the now King at *Chiddingstone* aforesaid, in Consideration that he the said *William*, at the Special Instance and Request of him the said *John* then and there assumed upon himself, and to the said *John* faithfully promised to pay to the aforesaid *John* twenty Shillings of lawful Money of *England*, when he should be thereunto requested, for the said Silk Waistcoat, and in full Satisfaction and Discharge of the Charge aforesaid, he the said *John* did then and there discharge and acquit him the said *William* of the Silk Waistcoat aforesaid, and of the Conversion aforesaid, and of all Actions and Demands.

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mands whatsoever of and concerning the Silk Waistcoat aforeaid, and the Conversion of the same Silk Waistcoat; and this he is ready to verify: Wherefore he prays Judgment if the said *John* ought to have his said Action against him.

Demurrer.

Joinder in Demurrer.

Hickes against Woodson. 1 *Ld. Raym.* 137. B. R.

Prohibition to
the Spiritual
Court, as to
Tithes.

Somersetshire, (to wit) **N***NICHOLAS Hicks*, who sues as well for the Lord the King and Lady the Queen as for himself in this Behalf, complains of *Samuel Woodson*, Clerk, Rector of the Parish Church of *Huntspill* in the County of *Somerset* aforeaid, in the Custody of the Marshal of the *Marshalsea* of the Lord the King and Lady the Queen, being before the King and Queen themselves, of a Plea wherefore he sued in the Court Christian against the Royal Prohibition to him before directed and delivered to the contrary thereof, for that (to wit) That whereas the Parish of *Huntspill* in the County aforeaid is an antient Parish, and whereas the said *Nicholas* for the Space of five Years now last past, and more, hath been and as yet is an Inhabitant within the Parish aforeaid, and for the whole Time aforeaid hath had and occupied forty Acres of Land, Meadow and Pasture, with the Appurtenances, being Parcel of the Manor of *Huntspill* in the said County of *Somerset* within the Parish aforeaid, and the Bounds, Limits and titheable Places of the same Parish. And also whereas there are had, and from Time whereof the Memory of Man is not to the contrary, there have been had with n the same Parish, and the Bounds, Limits and titheable Places of the said Parish, these Customs and Modus's of tithing, of and concerning the Tithes of Lambs following, brought forth and forth-coming within the Parish aforeaid, and the Bounds, Limits and titheable Places of the the same Parish; and of and concerning the Tithes of Milch Cows and Heifers kept and depastured within the Parish aforeaid, and the Bounds, Limits and titheable Places of the same Parish; and of and concerning the Tithes of Calves falling, brought forth and forthcoming within the Parish aforeaid, and the Bounds, Limits and titheable Places of the same Parish; and of and concerning the Tithes of Colts falling, brought forth and forth coming within the Parish aforeaid, and the

the Bounds, Limits and titheable Places of the same Parish; and of and concerning the Tithes of Hay growing, renewing and forthcoming within the Parish aforesaid, and the Bounds, Limits and titheable Places of the same Parish; and of and concerning the Tithes of Gardens and Orchards, being within the Parish aforesaid, and the Bounds, Limits and titheable Places of the same Parish; and of and concerning the Payment of the Offerings of all the Men and their Wives inhabiting within the Parish aforesaid, and the Bounds, Limits and titheable Places of the same Parish; that is to say, That every Occupier of any Lands or Tenements within the said Parish, and the Bounds, Limits and titheable Places of the same Parish, who hath in any Year kept any Milch Cow or Heifer, or any Milch Cows or Heifers within the Parish aforesaid, and the Bounds, Limits and titheable Places thereof, hath paid, and for all the Time aforesaid hath been used and accustomed to pay to the Rector of the Parish Church of *Huntspill* aforesaid, or to his Farmer or Deputy of the Rectory for the Time being, for every such Milch Cow three Pence, of lawful Money of *England*, and for every such Milch Heifer one Penny and an Halfpenny, of like lawful Money in every such Year, and no more, for all the Tithes of Milk of the same Cows and Heifers in the same Year; and that every such Occupier as aforesaid, who in any Year hath had any Lamb or any Lambs under the Number of seven Lambs brought forth and forthcoming within the said Parish, and the Bounds, Limits and titheable Places thereof, hath paid, and for all the Time abovesaid hath been used and accustomed to pay to the Rector of the Parish Church of *Huntspill* aforesaid, or to his Farmer or Deputy of that Rectory for the Time being, in the same Year one Halfpenny of the like lawful Money for every such Lamb so under the Number of seven Lambs brought forth and forthcoming, in full Satisfaction, Payment and Content of all Tithes of those Lambs: But if the same Occupier in any such Year hath had within the Parish aforesaid, and the Bounds, Limits and titheable Places thereof, any Lambs to the full Number of seven Lambs brought forth and forthcoming, then the same Occupier hath rendered and delivered, and for all the Time abovesaid hath been used and accustomed to render and deliver to the Rector of the Parish Church of *Huntspill* aforesaid, or to his Farmer or Deputy of that Rectory for the Time being, one Lamb of the same seven Lambs in such Year, in full Satisfaction, Payment and Content, and in the Name and Place

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Place of the Tithes of the same seven Lambs, and for the Number of seventeen Lambs two Lambs, and for every Calf one Halfpenny if less than seven Calves, and if above seven, then one Calf, and two Calves for seventeen Calves, and one Penny for every Colt, and two Pence for every Acre of Hay, and two Pence for every Garden and Orchard, and for every Man of the Age of sixteen Years two Pence, and for a Wife two Pence, for Oblations. And also whereas the Hundred of *Huntspill* and *Puriton* within the aforesaid County of *Somerset* is, and from Time whereof the Memory of Man is not to the contrary, hath been an antient Hundred, within which said Hundred the said Parish of *Huntspill* is, and from Time whereof the Memory of Man is not to the Contrary, hath been. And whereas within the same Hundred of *Huntspill* and *Puriton* there is, and for all the Time abovesaid there hath been, a certain antient Custom for all the Time abovesaid used and approved, that all the Inhabitants within the Hundred aforesaid, occupying any Lands, Meadow or Pasture within the Hundred aforesaid, have been free, exempt and discharged, and from Time to Time for all the Time abovesaid ought to be free, exempt and discharged of and from the Payment of any Tithes of or for the depasturing of any Cattle not employed to plough or pail, by them depastured in any Lands, Meadow or Pasture, being within the Hundred of *Huntspill* and *Puriton* aforesaid, to wit, at the Hundred aforesaid. And whereas the said *Nicholas* for the Space of seven Years next before the Exhibiting the Bill of the said *Nicholas* in the Court here, hath been, and as yet is, an Inhabitant within the Hundred aforesaid, and within the said Parish of *Huntspill*, and for all the same Time of seven Years aforesaid, did possess and occupy divers Lands, Meadow and Pasture within the Hundred and Parish aforesaid, and hath depastured upon the same Lands, Meadow and Pastures, and not elsewhere within the same Time divers Cattle not employed to plough or pail, that is to say, Cows, Heifers and Colts: Nevertheless the said *Samuel* well knowing the Premisses, but contriving and maliciously intending unjustly to aggrieve and oppress him the said *Nicholas*, against the due Form of Law, and against the Form and Effect of the said Modus's of Tithing, and the Custom aforesaid, and unjustly to violate the Customs and Prescriptions of those Modus's of Tithing, and also to disherit the said Lord the now King and Lady the now Queen, and their Crown, and to draw the

Consequence

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Consuſance of a Plea which belongs and appertains to the ſaid Lord the King and Lady the Queen, their Royal Crown and Dignity, to another Trial, hath drawn him the ſaid *Nicholas* into Plea, before the Venerable Man *Richard Hely*, Doctor of Laws, Surrogate of the Venerable Man *Edwin Sandys*, Clerk, Archdeacon of the Archdeaconry of *Wells*, lawfully conſtituted Surrogate, or the lawful Deputy of the ſaid Archdeaconry, or ſome other competent Judge in this Behalf, of and for the Subſtraction and Non-Payment of the Tithes of Lambs fallen, brought forth and forthcoming within the ſaid Pariſh, and the Bounds, Limits and titheable Places thereof, in the Years of our Lord 1689, 1690, &c. and alſo in the Months of *March, April, May* and *June*, in the Year of our Lord 1693, now current, or in every one or ſome of the ſame Months and Years, and of and for the Subſtraction and Non-Payment of the Tithes of Calves within the Pariſh aforeſaid, and the Bounds, Limits and titheable Places thereof, (ſo for Colts, Cows, Heifers, Hay, Gardens and Orchards, *mutatis mutandis*) and of and for the Subſtraction and Non-payment of Offerings of all the Men and their Wives inhabiting within the ſaid Pariſh, and the Bounds, Limits and titheable Places thereof, in the Years and Months aboveſaid, or in every one or ſome of them, by craftily and ſubtilly libelling in the ſame Court Chriſtian, againſt the ſaid *Nicholas Hicks*, in and by a certain Libel and a certain Schedule to the ſame Libel ſubſcribed or annexed, againſt him the ſaid *Nicholas Hicks*, in the ſaid Court Chriſtian exhibited under the Form following, that is to ſay, Firſt of all, That the ſaid Maſter *Samuel Woodſon* in the Years of our Lord 1689, 1690, &c. to wit, in the Months paſt in the ſame reſpectively concurring, and alſo in the Months of *March, April, &c.* in the Year of our Lord 1693, now current, or in every one or ſome of the ſaid Months and Years hath been and was Rector of the Pariſh Church of *Huntſpill* aforeſaid, and of all and ſingular the Tithes, Eccleſiaſtical Rights and Emoluments to the ſame Rectory belonging and appertaining, and the ſaid Rectory, with all its Rights, Members and Appurtenances rightly, lawfully, &c. canonically hath got and obtained, and the ſame ſo obtained, with all its Rights and Appurtenances, hath poſſeſſed and had, as he hath at this preſent Time, (except as within written) and for the true Rector and lawful Poſſeſſor of the ſame hath been for the Time aforeſaid, and alſo at preſent is commonly called, held, eſteemed, named and reputed, openly, publicly and notoriously;

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notoriously; he propoundeth nevertheless, &c. And he propoundeth jointly and severally of every Item, which as well of common Right of this renowned Kingdom of *England*, as from antient and laudable and lawful prescriptive Custom, from Time and through Time, the beginning whereof the Memory of Man is not to the contrary, hitherto hath been inviolably and unshakenly used and observed, and against Gainsayers hath often obtained in Judgment, or at least once the Right of perceiving, receiving and having all and singular the Tithes as well greater as lesser, mixt and minute whatsoever, and the Rest of the Rights and Emoluments of the Church whatsoever in the Schedule to these Presents annexed, contained and specified within the Parish of *Huntspill* aforesaid, and the Bounds, Limits and titheable Places of the same wheresoever, whensoever, howsoever, and as often as forthcoming, growing, renewing and happening to any Rector there whatsoever for the Time being, or his Farmers, and to the said Master *Samuel Woodeson*, Clerk, the present Rector there, hath belonged and appertained, doth belong and appertain, ought to belong and appertain, and doth and shall appertain and belong; and propoundeth as above. Also, That for 10, 20, 30, 40, 50, and 60 Years last past, more or less, and also from Time and through Time, the beginning whereof the Memory of Man is not to the contrary, the Rector of the said Rectory of the Parish Church of *Huntspill* aforesaid, for their respective Times successively being, and the said Master *Samuel Woodeson*, Clerk, the present Rector there, or his Predecessors, and all and every of his Predecessors in successive Times in the same being, in the same have been, as they ought to have been, in the quiet and peaceable Possession, or as of Right to perceive and have all and singular the Tithes aforesaid, and have received and had them by themselves, or their Predecessors, and of and upon the same have freely and fully disposed, and so it hath been and ought to be, and so the said Master *Samuel Woodeson*, Clerk, the Rector aforesaid, hath perceived, received and had for the whole, and all the Time of his Incumbency in the same, in Right, and in the Name of his Rectory, until and unto the Time of the Grass within written; and he propoundeth as above. Also the said *Nicholas Hicks* in the Years and Months aforesaid, or in one or some of them, all and singular the titheable Things, Fruits, Rights and Emoluments in the present Schedule annexed, contained and specified, within the Parish of *Huntspill* aforesaid, and the Bounds, Limits and

and titheable Places thereof, forthcoming, growing, renewing and happening, as in the same Schedule is declared, and they are drawn out, (which said Schedule the Party propounding will have to be accounted as if here inserted and read, as far as it may be expedient for him, and not otherwise, or in any other Manner) hath had, holden, possessed, received, and to his own proper Use converted and applied; and the Party Proponent propounded of every other Number of Things respectively titheable, and of the Tithes in the Schedule to these Presents, as above set forth annexed respectively contained and specified, more or less, and also such and such Number, Quality and Quantity, as by lawful Proofs or Confession of the Party in the Event of this Suit more fully shall come to be proved; and he propoundeth as above. Also that the true Value or Estimate of every titheable Thing and Things respectively titheable in the Schedule aforesaid to these Presents, as before is set forth, annexed, contained and specified, as of the Tithes or tenth Part thereof, to the Sums or respective Values in the same Schedule mentioned in the Months and Years aforesaid, or in one or some of them, in the common Estimation of Men manifestly did extend, and do extend; and the Party Proponent propoundeth of every other Sum or Value of the Things respectively titheable, and of the Tithes, more or less, and also of such and so much Money or Value, Quality and Quantity, as by lawful Proofs in the Event of this Suit more fully shall come to be proved; and he propoundeth as above. Also that the said *Nicholas Hicks* to pay, give and deliver to the before-named *Samuel Woodeson*, the Rector aforesaid, or to his lawful Deputy in this Behalf, all and singular the Tithes aforesaid, so as before set forth accustomed to be paid, and especially the Tithes and Ecclesiastical Rights and Emoluments aforesaid in the Schedule to these Presents (so as before is set forth) annexed, mentioned and specified, or otherwise, to compound duly with the said Rector for the same, or with his lawful Deputy, hath oftentimes, at least once, been properly and lawfully requested and importuned, who being so requested and importuned did not take care to do the Premises, or any of them, nor at present doth take any Care, but hath with-holden and refused to pay, but at least (more properly) with-holds and defers at present, to the great Peril of his Soul, and no small Prejudice and Grievance of the said Master *Samuel Woodeson*, the Rector aforesaid; and he propoundeth as above.

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bove. Also that the said *Nicholas Hicks* hath been, and is, an Inhabitant of the said Parish of *Huntspill*, manifestly under and subject to the Diocese and Jurisdiction of *Bath and Wells*; and he propoundeth as above. Also that all, and singular the Premisses were and are true, notorious, public, manifest, and in like Manner famous, and the public Voice and Fame have laboured of and concerning the same, as at present they labour; whereupon having given the Assurance required by Law in this Behalf, the Party of the said Master *Samuel Woodeson*, the Rector, aforesaid, prays Right and Justice, and his Complement thereof, to be done and administered to him with Effect, &c. In which said Schedule annexed to the said Libel as aforesaid, are contained the Words following, (that is to say) First of all, that in the Years and Months aforesaid, all, some or one of them, upon the Tenements, Estate and Lands which he the said *Nicholas Hicks* had held, possessed and enjoyed in the said Parish of *Huntspill*, and titheable Places thereof, there was kept feeding and depasturing twenty Ewe Sheep, and of them there was yearly fallen twenty Lambs, each Lamb worth three Shillings, and the Tithe after that Rate. Also that the said *Nicholas Hicks* in the Months and Years aforesaid, all, some or one of them, within the said Parish of *Huntspill* and titheable Places thereof, had and kept feeding and depasturing yearly four Cows and four Heifers, and for the Milk of each Cow he is to pay three Pence, and of every Heifer three Halfpence, according to the Custom of the said Parish. Also that the said *Nicholas Hicks* of the said Cows and Heifers above mentioned had fallen yearly six Calves, which he bred up for the Pail, for each he is to pay one Halfpenny, according to the Custom of the said Parish. Also that the said *Nicholas Hicks* the Months and Years aforesaid, all, some or one of them, within the Parish of *Huntspill* and titheable Places thereof, had held and possessed 20 Acres of Meadow, which he mowed, or caused to be mowed, yearly, for each Acre of which there is yearly due, and he ought to pay to the Rector of *Huntspill* aforesaid, for and in Lieu of Tithe-Hay, two Pence, according to the Custom of the said Parish. Also that the said *Nicholas Hicks* the Months and Years aforesaid, all, some or one of them, within the said Parish of *Huntspill* aforesaid, had and possessed one Garden and two Orchards yearly for which there is yearly due, and he ought to pay to the Rector of *Huntspill* aforesaid, three Pence, according to the Custom of the said Parish, to wit, one Penny for

for his Garden and each Orchard. Also that the said *Nicholas Hicks* the Months and Years aforesaid, all, some or one of them, within the Parish of *Huntspill* and titheable Places thereof, had and kept feeding and depasturing ten Colts above one Year old, which he sold away before they were used to the Plough, the feeding and depasturing of each Colt the Months and Years aforesaid being Monthly worth 4 s. and the Tithes after that Rate, and also had and kept feeding and depasturing the Months and Years aforesaid, all, some or one of them, in the said Parish ten Cows, ten Heifers ten Steers and ten Oxen, from the Time he bought them to the Time he sold them off they were never employed to the Plough or Pail, the Herbage and depasturing of each of the said Cows, Heifers, Steers and Oxen, being Monthly worth 4 s. and the Tithes after that Rate. Also that the said *Nicholas Hicks* the Months and Years aforesaid, all, some or one of them, in the said Parish of *Huntspill* and titheable Places thereof, had and kept four Mares, and of them had fallen and received four Colts yearly, for the Fall of each, he is, and ought to pay to the Rector of *Huntspill* aforesaid one Penny, according to the Custom of the said Parish. Also that the said *Nicholas Hicks* hath the Months aforesaid, all, or some or one of them, dwelt in the said Parish of *Huntspill*, and he and his Wife have received, or at least ought to have received, the Holy Sacrament of the Lord's Supper at their own Parish Church, for whose Offerings he is yearly to pay to the Rector at *Easter*, or thereabouts, 4 d. yearly, to wit, 2 d. for each. Also that the said *Nicholas Hicks* the Months and Years aforesaid, all, some or one of them, within the said Parish and titheable Places thereof, had, kept and bred up forty Head of Cattle, which he sold before they came to the Plough or Pail, the Herbage and depasturing of each of the same being Monthly worth 40 s. and the Tithe after that Rate. Also that the said *Nicholas Hicks* the Months and Years aforesaid, all, some or one of them, within the said Parish of *Huntspill* and titheable Places thereof, had and kept 6 Cows, 6 Heifers, 6 Steers and 6 Oxen, after they had been turned off from Plough and Pail, the feeding and depasturing whereof until they were fat, and looked on as such, and then sold off, from the Grass and Herbage and depasturing of the said Cows, Heifers, Steers and Oxen, being Monthly worth 5 s. and the Tithe after that Rate. Also that the said *Nicholas Hicks* the Months and Years aforesaid, all, some or one of them, had and kept feeding and depasturing 8 Cows and Heifers,

and

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and of them had fallen and received 8 Calves yearly, each Calf at 7 Weeks old (which is the customary Time for the Tithe Calf) being worth 10 s. and the Tithes after that Rate, as by a Copy of the Libel and Schedule aforesaid, brought here into Court and read, among other Things more fully appears: And him the said *Nicholas Hicks* in the said Court Christian before the said Spiritual Judge, by occasion of the Premisses, hath unjustly bound to appear and answer to the said *Samuel Woodeson* of and upon the Premisses: And although he the said *Nicholas Hicks* in every Year of the Years aforesaid wherein he the said *Nicholas* had any Lambs, Calves or Colts, any Milch Cows or Heifers, any Hay, any Gardens or Orchards within the Parish aforesaid, and the Bounds, Limits and titheable Places thereof, being, growing, renewing or forthcoming, or hath dwelt within the Parish aforesaid, hath been always ready and offered, and yet is still ready to pay to the said *Samuel* the said several Sums of Money for the Tithes of Lambs, Calves, Colts, Milch Cows and Heifers, Hay, Gardens and Orchards, and for the Oblations aforesaid according to the Form and Effect of the several Modus's of Tithing aforesaid: And although he the said *Nicholas* all and singular the Premisses aforesaid hath pleaded and alledged in his Discharge of Payment of the Tithes by the said *Samuel* demanded in the said Court Christian before the said Spiritual Judge, and hath often offered to prove the same by unavoidable Testimony, yet the said Spiritual Judge hath absolutely refused to admit or receive that Plea, Allegation and Proof; and the said *Richard Hely* with all his Power endeavours and daily contrives to condemn the said *Nicholas*, by the definitive Sentence of the said Court Christian of and upon the Premisses in the Libel and Schedule aforesaid contained, and to compel him to pay the Tithes aforesaid in Form aforesaid demanded, in Contempt of the said Lord the now King and Lady the now Queen, their Crown and Dignity, and to the great Damage, Prejudice and manifest Impoverishing of him the said *Nicholas Hicks*, and against the due Form of Law and Prescription and Customs and Modus's of Tithing aforesaid: And although the said *Nicholas Hicks* on the last Day of August in the 5th Year of the Reign of the said Lord *William* and Lady *Mary*, now King and Queen of England, &c. at *Huntspill* aforesaid in the County aforesaid, the Writ of the said Lord the King and Lady the Queen of Prohibition to the contrary to him the said *Samuel Woodeson* delivered.

Nevertheless

Nevertheless the said *Samuel Woodeson* hath not ceased to prosecute the said Plea against the said *Nicholas*, but hath further prosecuted that Plea in the said Court Christian, (notwithstanding the said Writ of Prohibition) in Contempt of the said now Lord the King and Lady the Queen, and contrary to the Prohibition aforesaid; whereupon the said *Nicholas*, who sues as well for the said Lord the King and Lady the Queen in this Behalf, as for himself, &c. says, that he is injured, and hath Damage to the Value of 200 *l.* and thereupon as well for the Lord the King and Lady the Queen as for himself he brings Suit, &c.

And now at this Day, to wit, *Friday* next after the Mor- Defendant
row of the Holy *Trinity* in this same Term, until which imparls.
Day the said *Samuel Woodeson* had leave to imparl to the
Bill aforesaid, and then to answer, &c. before the Lord
the King and Lady the Queen at *Westminster* come as well
the said *Nicholas*, who sues as well, &c. by his Attorney
aforesaid, as the said *Samuel Woodeson* by *Giles Clarke* his
Attorney; and the said *Samuel* defends the Force and In-
jury when, &c. and all Contempt and whatsoever, &c. and Plea.
saith, that he hath not prosecuted the Plea aforesaid against
the said *Nicholas* in the Court Christian after the Prohibiti-
on of the said Lord the King and Lady the Queen, to him
thereupon delivered, as the said *Nicholas*, who sues as well, Issue.
&c. above supposes; and of this he puts himself upon the
Country, and the said *Nicholas*, who sues as well, &c.
thereof likewise: But for having a Writ of the Lord the As to the
King and Lady the Queen of Consultation as to the Tithes Tithe of
of Lambs, for which the said *Samuel* hath drawn into Plea Lambs.
the said *Nicholas* in the Court Christian aforesaid, before
the said Spiritual Judge, he the said *Samuel* saith, that the
said *Nicholas* in the Months and Years in the Declaration
aforesaid specified, had, kept and depastured upon his
Lands and Tenements within the Parish of *Huntspill* afore-
said twenty Ewe Sheep, and of them had twenty Lambs
yearly, every one of them of the Value of 3 *s.* for the
Tithes of which said Lambs to the same *Samuel*, as Rector
of the Parish Church aforesaid, due and payable, he the
said *Samuel* drew into Plea him the said *Nicholas* in the
Court Christian aforesaid, before the said Spiritual Judge,
before the prosecuting of the said Writ of Prohibition, as
it was lawful for him to do; without this, that within the Defendant
Parish of *Huntspill* aforesaid, and the Bounds, Limits and traverses the
tithable Places of that Parish, there is had, and from Modus.
Time whereof the Memory of Man is not to the contrary,
there hath been had, such a Custom and Modus of tithing

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of and concerning the Tithes of Lambs there falling, brought forth and forthcoming, to wit, that every Occupier of any Lands or Tenements within the said Parish, and the Bounds, Limits and titheable Places of the same Parish, who in any Year hath had any Lamb or Lambs under the Number of 7 Lambs brought forth and forthcoming within the said Parish, and the Bounds, Limits and titheable Places thereof, and hath paid, and for all the Time aforesaid hath been used and accustomed to pay to the Rector of the Parish Church of *Huntspill* aforesaid, or to his Farmers or Deputy of that Rectory for the Time being, in the same Year, one Halfpenny of the like lawful Money of *England*, for every such Lamb so under the Number of 7 Lambs brought forth and forthcoming, in full Satisfaction, Payment and Content of all Tithes of those Lambs; but if the same Occupier in any such Year hath had within the Parish aforesaid, and the Bounds, Limits and titheable Places thereof, any Lambs to the full Number of 7 Lambs brought forth and forthcoming, then the same Occupier hath rendered and delivered, and for all the Time aforesaid hath been used and accustomed to render and deliver to the Rector of the Parish Church of *Huntspill* aforesaid, or to his Farmer or Deputy of that Rectory for the Time being, one Lamb of the same 7 Lambs in such Year, in full Satisfaction, Payment and Content, and in the Name and Place of the Tithes of the same 7 Lambs: And if the same Occupier in any one Year hath had any Lambs to the full Number of seventeen Lambs brought forth and forthcoming within the said Parish, and the Bounds, Limits and titheable Places thereof, then the same Occupier hath rendered and delivered, and for all the Time aforesaid hath been used and accustomed to render and deliver to the Rector of the Parish Church of *Huntspill* aforesaid, or his Farmers or Deputy of the said Rectory for the Time being, two Lambs of the same seventeen Lambs in every such Year, for the Tithes of the same 17 Lambs, as the said *Nicholas* above thereof complains; and this he is ready to verify: Wherefore he prays Judgment, and a Writ of the said Lord the King and Lady the Queen of Consultation, as to the Tithes of Lambs aforesaid, to be granted to him in this Behalf, &c. And for having a Consultation as to the Tithes of Calves aforesaid, for which the said *Samuel* hath drawn into Plea the said *Nicholas* in the Court Christian aforesaid, before the said Spiritual Judge, he the said *Samuel* saith, that the said *Nicholas* in the Months and Years aforesaid had kept and depastured upon his Lands

The like for
Calves.

and

and Tenements within the Parish aforeſaid 16 Cows and Heifers, and of them had 14 Calves yearly fallen, brought forth and forthcoming, each of the ſame Calves of the Value of ten Shillings, for the Tithes of which ſaid Calves to the ſame *Samuel*, as Rector of the Pariſh Church aforeſaid, due and payable, he the ſaid *Samuel* drew into Plea him the ſaid *Nicholas* in the Court Chriſtian aforeſaid, before the ſaid Spiritual Judge, before the proſecuting of the ſaid Writ of Prohibition, as it was lawful for him to do; without this, that within the Pariſh of *Huntſpill* aforeſaid and the Bounds, Limits and titheable Places thereof, there is had, and from Time whereof the Memory of Man is not to the contrary, there hath been had, a Cuſtom that every Occupier of any Lands or Tenements within the Pariſh aforeſaid, and the Bounds, Limits and titheable Places of the ſame Pariſh, who had any Calf or any Calves under the Number of 7 Calves in any Year brought forth and forthcoming within the ſaid Pariſh, and the Bounds, Limits and titheable Places thereof, and hath paid, and for all the Time aforeſaid hath uſed and been accuſtomed to pay to the Rector of the Pariſh Church of *Huntſpill* aforeſaid, or his Farmers or Deputy of that Rectory for the Time being, in every ſuch Year one Halfpenny, of the like lawful Money for each of the ſaid Calves, in full Satisfaction, Payment and Content of all the Tithes of thoſe Calves; but if the ſame Occupier (as before in the Traverse as to Lambs). And for having a Conſultation as to Tithes for depaſturing of Colts, Cows, Steers, Heifers and Oxen not employed to Plough or Pail, and alſo other unfruitful Cattle within the Pariſh aforeſaid depaſtured, for which he the ſaid *Samuel* hath drawn into Plea the ſaid *Nicholas* in the Court Chriſtian aforeſaid, before the ſaid Spiritual Judge, he the ſaid *Samuel* ſaith, that the ſaid *Nicholas* in every Year of the Years aforeſaid had, kept and depaſtured upon his Lands and Tenements aforeſaid within the Pariſh aforeſaid, Colts, Cows, Heifers and Oxen, not employed to the Plough or Pail, and other unfruitful Cattle in the Declaration aforeſaid mentioned, for the Tithes of depaſturing of which ſaid Cattle to him the ſaid *Samuel*, as Rector of the Pariſh Church aforeſaid, due and payable, he the ſaid *Samuel* drew into Plea him the ſaid *Nicholas* in the Court Chriſtian aforeſaid, before the ſaid Spiritual Judge, before the proſecuting of the ſaid Writ of Prohibition, as before is ſet forth, as it was lawful for him to do; without this, that within the ſaid Hundred of *Huntſpill* and *Puriton* there is, and for all the Time aboveſaid there hath been *Non Deci-*

Traverse as to Calves, &c.

And ſo alſo for all the other Matters.

Traverse as to Custom in the Hundred in
been mando,

PLEADINGS TO THE CASES.

been an antient Custom, for all the Time abovesaid used and approved, that all the Inhabitants within the Hundred aforesaid occupying any Lands, Meadow or Pasture within the Hundred aforesaid, have been free, exempt and discharged, and from Time to Time for all the Time abovesaid ought to be free, exempt and discharged of and from the Payment of any Tithes of or for the depasturing of any Cattle not employed to Plough or Pail, by them depastured in any Lands, Meadow or Pasture, being within the Hundred of *Huntspill* and *Puriton* aforesaid, as the said *Nicholas* above complains; and this he is ready to verify: Wherefore he prays Judgment, and the Writ of the said Lord the King and Lady the Queen of Consultation, as to the Tithes for the depasturing of Cattle not employed to Plough or Pail, and of other unfruitful Cattle, for which the said *Samuel* hath drawn into Plea him the said *Nicholas* in the Court Christian aforesaid, as before is set forth in this Behalf, to be granted to him, &c. And for having the the Writ of the said Lord the King and Lady the Queen of Consultation as to the Offerings aforesaid, the Tithes of Milch Cows and Heifers aforesaid, the Tithes of Hay aforesaid, the Tithes of Gardens and Orchards aforesaid, and the said Tithes of the said four Colts in the Parish aforesaid yearly fallen, for which he the said *Samuel* hath drawn into Plea him the said *Nicholas* in the Court Christian aforesaid; the said *Samuel* prays Judgment of the Declaration aforesaid, because he saith, that the said Declaration, and the Matter in the same contained, are not sufficient in Law to compel him the said *Samuel* to answer to that Declaration, as to the same Oblations and Tithes; to which the said *Samuel* hath no Necessity, nor is bound by the Law of the Land in any Manner to answer; and this he is ready to verify: Wherefore for want of a sufficient Declaration in this Behalf, he the said *Samuel* prays Judgment of the Declaration aforesaid, and that the said Declaration as to the said Oblations and Tithes may be quashed, and that the Writ of the said Lord the King and Lady the Queen may be thereupon granted to him, &c. And the said *Nicholas* saith, that by any Thing by the said *Samuel* above in pleading alledged, he the said *Samuel* ought not to have the Writ of the said Lord the King and Lady the Queen of Consultation; because as to the said Plea of the said *Samuel* in Manner and Form above pleaded, as to the Tithes of Lambs, for which the said *Samuel* hath drawn into Plea him the said *Nicholas* in the Court Christian aforesaid, before the said Spiritual Judge, he the said *Nicholas* as before saith,

Demurrer to
Part.

Replication.

saith, That within the Parish of *Huntspill* aforesaid, and Takes Issue on the Bounds, Limits and titheable Places of that Parish, the Traverse there is had, and from Time whereof the Memory of Man of the *Modus* is not to the contrary, there hath been had such a Custom as to Lambs. and Modus of Tithing, of and concerning the Tithes of Lambs there fallen, brought forth and forthcoming, to wit, that every Occupier of any Lands or Tenements within the said Parish, and the Bounds, Limits and titheable Places of the same Parish, who in any Year hath had any Lamb or Lambs under the Number of 7 Lambs brought forth and forthcoming within the said Parish, and the Bounds, Limits and titheable Places thereof, hath paid, and for all the Time aforesaid hath been used and accustomed to pay to the Rector of the Parish Church of *Huntspill* aforesaid, or to his Farmers or Deputy of that Rectory for the Time being, in the same Year, one Halfpenny of the like lawful Money of *England*, for every such Lamb so under the Number of 7 Lambs brought forth and forthcoming, in full Satisfaction, Payment and Content of all Tithes of those Lambs: but if the same Occupier in any such Year hath had within the Parish aforesaid, and the Bounds, Limits and titheable Places thereof, any Lambs to the full Number of 7 Lambs brought forth and forthcoming, then the same Occupier hath rendered and delivered, and for all the Time aforesaid hath been used and accustomed to render and deliver to the Rector of the Parish Church of *Huntspill* aforesaid, or to his Farmer or Deputy of that Rectory for the Time being, one Lamb of the same 7 Lambs in such Year, in full Satisfaction, Payment and Content, and in the Name and Place of the Tithes of the same 7 Lambs; and if the same Occupier in any one Year hath had any Lambs to the full Number of 17 Lambs brought forth and forthcoming within the said Parish, and the Bounds, Limits and titheable Places thereof, then the same Occupier hath rendered and delivered, and for all the Time aforesaid hath been used and accustomed to render and deliver to the Rector of the Parish Church of *Huntspill* aforesaid, or his Farmers or Deputy of the said Rectory for the Time being, two Lambs of the same 17 Lambs, as the said *Nicholas* above thereof complains; and this he prays may be inquired of by the Country, and the said *Samuel* likewise, &c.

The like Replications and Issues joined upon the other Traverses, as to the Modus for Calves, and as to the Custom alledged in *Non Decimando* in the Hundred of *Huntspill*. And a Joinder in Demurrer as to the Rest.

Pleas before the Lord the King at Westminster of the Term of Saint Michael in the eighth Year of the Reign of the Lord William, now King of England, &c. Roll 123.

Chamberline against Harvey. 1 Ld. Raym. 146.

Count in
Trespas for a
Negro Slave.

London, (to wit) **B**E it remembered, that on *Wednesday* next after three Weeks of Saint Michael in this same Term, before the Lord the King at *Westminster* came *Willoughby Chamberline, Esq;* by *Godfrey Woodward* his Attorney, and brought here into the Court of the said Lord the King then there his certain Bill against *Robert Harvey, Esq;* in Custody of the Marshal, &c. of a Plea of Trespas; and there are Pledges of prosecuting, to wit, *John Doe* and *Richard Roe*; which said Bill follows in these Words, to wit, *London, to wit, Willoughby Chamberline, Esq;* complains of *Robert Harvey, Esq;* in Custody of the Marshal of the *Marshalsea* of the Lord the King, being before the King himself, for that the said *Robert* on the first Day of *September* in the Year of our Lord 1695, with Force and Arms, one Negro of him the said *William*, of the Price of 100 l. of lawful Money of *England*, at *London* aforesaid, to wit, in the Parish of the *Blessed Mary of the Arches* in the Ward of *Cheape*, took and led away from him, and then and there detained and kept Possession of the Negro aforesaid from the said first Day of *September* until the Exhibiting of this Bill, so that he the said *Willoughby* totally was without, and lost the Use and Benefit of the said Negro for the whole Time aforesaid, and other Wrongs to the said *Willoughby* then and there did, against the Peace of the said Lord the now King, to the Damage of him the said *Willoughby* of 150 l. and thereupon he brings Suit, &c.

Not Guilty.

And the said *Robert* by *Robert Stone* his Attorney comes and defends the Force and Injury when, &c. and saith, that he is not thereof guilty in Manner and Form as the said *Willoughby* above complains against him; and of this he puts himself upon the Country, and the said *Willoughby* thereupon likewise: Therefore let a Jury thereupon come before the Lord the King at *Westminster* on *Thursday* next after the Morrow of *All Souls*; and who neither, &c. to recognize, &c. because as well, &c. The same Day is given to the Parties aforesaid there, &c. Afterwards the Process thereupon is continued between the Parties aforesaid in the Plea aforesaid, by the Jury being respited thereupon between

tween them, before the Lord the King at *Westminster* until *Thursday* next after fifteen Days of Saint *Martin*, unless the Lord the King's trusty and well-beloved *John Holt*, Knt. Chief Justice of the Lord the King, assigned to hold Pleas in the Court of the said Lord the King himself, shall before come on *Wednesday* next after 15 Days of Saint *Martin* at *Guild-hall, London*, by Form of the Statute, for want of Jurors, &c. At which Day before the Lord the King at *Westminster* cometh the said *Willoughby* by his said Attorney, and the said Chief Justice before whom, &c. hath sent here his Record before him had in these Words: Afterward on the Day and at the Place within contained, before *John Holt*, Knt. Chief Justice of the Lord the King, assigned to hold Pleas in the Court of the said Lord the King, before the King himself, come as well the within named *Willoughby Chamberline*, Esq; as the within written *Robert Harvey*, Esq; by their Attornies within contained; and the Jurors of the Jury, whereof Mention is within made, being called, certain of them, to wit, *Thomas Sericole, Richard Martin, Samuel Stone, Benjamin Hodgson, Jeremiah Barratt* and *Nathaniel Spinlow* came, and are sworn upon that Jury; and because the Rest of the Jurors of the same Jury did not appear, therefore others of the By-standers, by the Sheriffs of *London* aforesaid, being chosen to this, at the Request of the said *Willoughby Chamberline*, and by the Command of the Chief Justice aforesaid newly appointed, whose Names are affixed in the Panel within written, according to the Form of the Statute in such Case made and provided; and the Jurors so newly appointed, to wit, *Thomas Pool, Richard Martin, Thomas Ward, John Watson, Philip Brewster* and *Richard Chauncey* being called likewise come, who being chosen, tried and sworn to speak the Truth concerning the Matter within contained, together with other Jurors aforesaid before impanelled and sworn, say upon their Oath, That one *Edward Chamberline* long before the within written Time when, &c. was seised of a certain Plantation in the Island of *Barbadoes* in the *West-Indies* in Parts beyond the Seas in his Demesne as of Fee, and of certain Negro Slaves, being Slaves belonging and appertaining to the same Plantation; and the aforesaid Negro Slave long before the within written Time when, &c. was born within the Island aforesaid of Negro Parents, Slaves belonging and appertaining to the same Plantation; and that long before the within written Time when &c. to wit, on the 29th Day of *April* in the Year of our Lord 1668, by one *William Willoughby*, Deputy Governor, Council

Nisi prius.

Postea.

Tales de Circumstantibus.

Special Verdict.

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and Assembly, being the Representatives of that Island in that Behalf lawfully authorized and commissioned at the Island aforesaid, it was enacted in these *English* Words following, *Barbadoes*, An Act declaring the Negro Slaves of this Island to be real Estates: Whereas a very considerable Part of the Wealth of this Island consists in our Negro Slaves, without whose Labour and Service we shall be utterly unable to manage our Plantations here, thereby relieving our Wants, and bringing that considerable Increase of Revenue which this Place affords to his Majesty's Coffers, as well here as in *England*; and whereas some Law-Suits have risen, and other great Inconveniencies have followed, where divers Persons dying Intestate have left their Right and Interest of their Negro Slaves to be by Law disputed between their Heirs, Executors and Administrators, wherein the various Judgments and Affections of several Courts or Jurors have sometimes found for one, and at other Times for the other, for a full Remedy of these Inconveniencies, and to the Intent that the Heirs and Widow who claim Dower may not have bare Lands without Negroes to manure the same, and also that the Condition, Right and Interest of Negroes, to all other Ends and Purposes may be fully known and determined, the Deputy Governors, Council and Assembly, being willing that all Ambiguities herein should be removed, and the Law in this Case be declared and put in a Certainty, have ordained and enacted by the Deputy Governor, Council and Assembly, and by the Authority of the same, that from and after Publication hereof, all Negro Slaves in all Courts of Judicature, and other Places within this Island, shall be held, taken and adjudged to be Estates Real, and not Chattels, and shall descend unto the Heir or Widow of any Person dying according to the Manner and Custom of Lands of Inheritance held in Fee-simple; provided always, that no Person selling or alienating any of his or her Negroes, is hereby held or obliged to cause such Sale or Alienation to be inrolled, as is accustomed to be done and required by the Laws of this Island, as in all other Real Estates; any Usage, Custom or Law to the contrary notwithstanding. Provided this Act, or any Thing therein contained, shall not be taken and deemed to extend unto any Merchant, Factor or Agent, bringing Negro Slaves to this Island, and having the Consignments of any Slaves under them, but that in all Respects they, their Executors, Administrators or Assigns, may hold, possess and enjoy such Slaves or Negroes in such Condition as they might have done before the making of

this Act, until Sale of such Slave or Slaves hath been made in the Island, as by that Act more fully appears. And that the said *Edward Chamberline* long before the said Time when, &c. at the Island aforesaid died seised of his like Estate of and in the Plantation and Negro Slaves aforesaid thereunto belonging; by and after whose Death, one third Part of the Plantation and Negro Slaves aforesaid, whereof, the Negro in the Declaration aforesaid mentioned was one, descended to *Mary*, the Widow and Relict of the said *Edward Chamberline*, in the Name of her Dower, by the Laws of the Island aforesaid; and the Reversion of the said third Part descended to the said *William Chamberline*, as the Son and Heir of the said *Edward*; and being so seised, the said *Mary* afterwards and long before the Time when, &c. took for her Husband one *John Witham*, Knt. by which, the said *John Witham* was seised in Right of his said Wife of one third Part of the Plantation and Negro Slaves for the Term of the Life of his said Wife; and the said *John Witham* being so seised, the within named Negro, a true Native, long before the within written Time when, &c. to wit, in the 36th Year of the Reign of *Charles* the Second, late King of *England*, brought within this Kingdom of *England*, and afterwards, the said Negro Slave above-mentioned remained in the Service of him the said *John* within this Kingdom of *England* for the Space of divers Years, from that Time and before the said Time when, &c. according to the Rites of the Church of *England*, but without the Knowledge or Consent of the said *Willoughby Chamberline*, there was baptized; and that the said *John Witham* afterwards, and after the Death of his said Wife, but long before the said Time when, &c. within this Kingdom of *England* absolutely put the said Negro Slave out of his Service; and also afterwards and before the said Time when, &c. the said Negro Slave served other Subjects of this Kingdom of *England*, and at the within written Time when, &c. within this Kingdom of *England* was retained in the actual Service of the said *Robert Harvey*, to take of the said *Robert Harvey* according to the Rate of six Pounds by the Year for his Wages in that Behalf: But whether upon the whole Matter aforesaid, by the Jury aforesaid in Form aforesaid found, the said *Robert Harvey* be guilty of the Trespass within specified or not, the Jurors aforesaid are wholly ignorant, and pray the Advice of the Court here concerning the Premises; and if upon the whole Matter aforesaid, by the Jury aforesaid in Form aforesaid

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fore said found, it shall seem to the Justices and the Court here that the said *Robert Harvey* be guilty of that Trespass, then the said Jurors say upon their Oath, that the said *Robert Harvey* is guilty of the Trespass aforesaid, as the said *Willoughby Chamberline* within complains against him; and they assess the Damages of him the said *Willoughby*, by occasion of the Trespass aforesaid, besides his Costs and Charges, to fifty Pounds; and for his Costs and Charges three Shillings and four Pence; and if upon the whole Matter aforesaid, by the Jury aforesaid in Form aforesaid found, it shall seem to the same Justices here that the said *Robert Harvey* be not guilty of the Trespass aforesaid, then they the said Jurors say upon their Oath, that the said *Robert Harvey* is not guilty of the Trespass aforesaid, as he the said *Robert* hath within in pleading alledged: And because the Justices here are not yet advised, &c.

Hilary Term in the seventh Year of King William the Third.
Roll 1684. C. B.

Kimp against Cruwes and Others. 1 Ld. Raym. 167.

Trespass for breaking Plaintiff's Close and taking 3 Cows. *Devonshire*, (to wit) **H**UMFREY Cruwes late of *Morchard Cruwys* in the County aforesaid, Yeoman, *Joan Wood* late of the same, Spinster, *William Parker* late of the same, Husbandman, and *Thomas Wood* late of *Stockly Pomeroy* in the County aforesaid, Husbandman, were attached to answer to *John Kimp* of a Plea, wherefore with Force and Arms the Close of him the said *John*, at the Parish of *Morchard Cruwys* in the County aforesaid, they broke and entred, and the Cattle of him the said *John* of the Price of 15*l.* at the Parish of *Morchard Cruwys* aforesaid lately found they took, and those Cattle unto a certain Pound in the Parish of *Witheridge* in the County aforesaid they drove and chased, and in that Pound impounded, and those Cattle in that Pound there for a long Time detained, and other Wrongs to him did, to the great Damage of him the said *John*, and against the Peace of the Lord the now King, &c. And whereupon the said *John* by *George Palmer* his Attorney complains, that the said *Humfrey*, *Joan*, *William* and *Thomas*, on the ninth Day of *October* in the 7th Year of the Reign of the Lord the now King, with Force and Arms, &c. the Close, to wit, one Close called the *Broad Close* of him the said *John*, at the Parish of *Morchard Cruwys* in the County aforesaid, they

they broke and entred, and the Cattle, that is to say, three Cows of him the said *John* of the Price, &c. at *Morchard Cruwys* aforesaid lately found they took, and those Cattle unto a certain Pound in the Parish of *Witberidge* in the County aforesaid they drove and chased, and in that Pound impounded, and those Cattle in that Pound for a long Time, to wit, for the Space of forty and eight Hours detained, and other Wrongs, &c. to the great Damage, &c. and against the Peace, &c. whereupon he saith that he is injured, and hath Damage to the Value of 40*l.* and thereupon he brings Suit, &c.

And the said *Humfrey, Joan, William* and *Thomas*, by *Nathaniel Rider* their Attorney come and defend the Force and Injury when, &c. And the said *Joan* saith that she is not guilty of the Trespasses aforesaid, as the said *John* above complains against her; and of this she puts herself upon the Country, and the said *John* likewise. And the said *Humfrey, William* and *Thomas*, as to the coming with Force and Arms, and also the breaking and entring of the Close aforesaid, called *Broad Close*, say, that they are not guilty thereof; and of this they put themselves upon the Country, and the said *John Kimp* likewise. And as to all the Residue of the Trespasses aforesaid above supposed to be done, they the said *Humfrey, William* and *Thomas* say, that the said *John Kimp* ought not to have his said Action thereof against them, because they say, that the Place in which they took the Cattle aforesaid in the Declaration aforesaid specified is, and at the same Time when, &c. was, three Acres of Meadow, called and known by the Name of the *Bushment Meadow*, lying in *Morchard Cruwys* aforesaid, of which said three Acres of Meadow, with the Appurtenances, in which, &c. and also of certain Closes of Pasture called *Great Broad Park* and *Little Broad Park* in *Morchard Cruwys* aforesaid, the said *Humfrey* and one *Thomas Mocke* before the said Time when, &c. were possessed for a certain Term of 15 Years, which is yet unexpired; and being so possessed thereof, they the said *Humfrey* and *Thomas* on the 14th Day of *February* in the 6th Year of the Reign of the Lord *William*, now King of *England*, &c. at *Morchard Cruwys* aforesaid, demised to one *William Williams* the said 3 Acres of Meadow, with the Appurtenances, in which, &c. they the said *Humfrey, William* and *Thomas*, the Cattle aforesaid as aforesaid took, and the said Pasture called *Great Broad Park* and *Little Broad Park*, containing in the Whole by Estimation 20 Acres, or thereabouts, or more or less, together with all Ways, Paths, Hedges, Banks, Easements

One Defendant pleads Not guilty.

The others Not guilty as to the breaking and Entry.

And justify the taking the Cows as a Distress for Rent.

PLEADINGS TO THE CASES.

ments and Commodities whatsoever to the same several Closes belonging or appertaining, except and always reserved out of that Demise to them the said *Humfrey* and *Thomas Mocke*, their Executors and Administrators, all Timber Trees, Saplings and Trees likely to be Timber, growing or increasing in and upon the Premises; and also except the Coppice and Hedge thereunto belonging, and the Wood there growing and increasing with all the usual Ways and Paths to the Coppice aforesaid, and one Way through the *Broad Park* to a certain Piece of Land called the *Mildourne*, in, upon and over the before demised Premises, during the Term to him the said *William Williams* granted; To have and to hold the said demised Premises, and every Part and Parcel thereof, (except as before excepted) to him the said *William Williams*, his Executors, Administrators and Assigns, from and immediately after the 25th Day of *March* then last past, for and during the full and whole Term of nine Years from thence next following, fully to be compleat and ended, he the said *William Williams*, his Executors, Administrators and Assigns, yielding and paying therefore yearly and every Year to the said *Humfrey* and *Thomas Mocke*, their Executors, Administrators and Assigns, the annual Rent or Sum of 7 *l.* of lawful *English* Money, at the four most usual Feasts or Days of Payment in the Year, that is to say, the Nativity of *St. John* the Baptist, *St. Michael* the Archangel, the Nativity of our Lord God, and the Annunciation of the Blessed Lady the Holy Virgin *Mary*, by equal Portions: By Virtue of which said Demise the said *William Williams* into the said demised Premises, with the Appurtenances, whereof, &c. long before the said Time when, &c. entred, and was and yet is thereof possessed for the Term aforesaid and three Pounds and 10 *s.* of the Rent aforesaid for half of an Year, ended upon the Feast of *St. Michael* the Archangel, in the 7th Year of the Reign of the Lord *William* now King of *England*, &c. aforesaid, at the said Time when, &c. were in arrear, and to the said *Humfrey* and *Thomas* are yet unpaid; wherefore the said *Humfrey*, in Right of him the said *Humfrey*, and of the said *Thomas Mocke* and the said *William* and *Thomas Wood*, as the Servants of them the said *Humfrey* and *Thomas Mocke*, and by their Command, into the said three Acres of Meadow in which &c. at the said Time when, &c. entred, and the Cattle aforesaid in the Declaration aforesaid above specified in the Name of a Distress for the said Rent as aforesaid being in Arrear, in the same three Acres of Meadow called *Bul*

gent Meadow, at the said Time when, &c. took, and those Cattle unto the Pound Overt, at *Witheridge* aforesaid in the County of *Devon* aforesaid, at the said Time when, &c. drove, and there in the Pound Overt impounded and detained for the Space of Time aforesaid in the said Declaration above-mentioned, in the Name of a Distress for the Rent so as aforesaid being in Arrear, as it was lawful for them to do; and this they are ready to verify: Wherefore they pray Judgment if the said *John Kimp* ought to have his said Action thereof against them, &c.

And the said *John Kimp* as to the said Residue of the Trespass aforesaid saith, that he by any Thing before alleged ought not to be barred from having his said Action thereof, because protesting that the Cattle aforesaid, at the said Time when, &c. were taken in the said Close called *the Broad Close* in *Morchards Cruwys* aforesaid, in the said Declaration above-mentioned: Nevertheless for Plea the Replication said *John* saith, that the Cattle aforesaid at the Time of that the Cattle were not levant and couchant in the said three Acres of Meadow, called *Busbment Meadow*; and this he is ready to verify: Wherefore he prays Judgment and his Damages for the Residue of the Trespass aforesaid, to be adjudged to him, &c.

And the said *Humfrey, William* and *Thomas* say, that the Cattle aforesaid at the Time of taking of the same Cattle were levant and couchant in and upon the said three Acres of Meadow called *Busbment Meadow*; and of this they put themselves upon the Country, and the said *John* likewise: Therefore as well to try that Issue, as the said other Issues between the Parties aforesaid above joined, the Sheriff is commanded that he cause to come here in 8 Days of the Purification of the Blessed *Mary* twelve, &c. by whom, &c. and who neither, &c. to take Cognizance, &c. because as well &c. At which Day the Jury between the Parties aforesaid of the Plea aforesaid is thereupon rested between them here until this Day, that is to say, from *Easter Day* in 15 Days then next following, unless the Justices of the Lord the King, assigned to take the Assizes in the County aforesaid, by Form of the Statute, &c. on *Saturday* the 28th Day of *March* next past, at the Castle of *Exeter* in the County aforesaid, shall first come: and now here at this Day comes the said *John* by his Attorney aforesaid, and the said Justices before whom at the Assizes, &c. have sent here their Record in these Words: *Postea*. Afterwards on the Day and at the Place within contained, before

PLEADINGS TO THE CASES.

Tales.

Verdict for
the Plaintiff
on all the
three Issues.

before *Littleton Powis*, Knt. one of the Barons of the Exchequer of the Lord the King, and *Francis Swanton*, Esq; to the said *Littleton Powis* and *John Holt*, Knt. Chief Justice of the said Lord the King, assigned to hold Pleas before the King himself, Justices of the said Lord the King, assigned to take the Assizes in the County of Devon, by Form of the Statute, &c. for this Time associated, the Presence of him the said *John Holt* not being expected, by Virtue of the Writ of the said Lord the King of *Si non omnes*, &c. came the within named *John Kimp* by his Attorney within contained, and the within named *Humfrey Cruwys*, *Joan Wood*, *William Parker* and *Thomas Wood*, although solemnly called came not, but made Default. Therefore the Jury, whereof Mention is within made, is taken against them by Default; and the Jurors of that Jury being called, some of them, to wit, *John Partridge*, *Nicholas Crook*, *Benjamin Bidgood*, *Peter Hole*, *George Ayre*, *William Carr* and *William Vogures* came, and are sworn upon that Jury; and because the Rest of the Jurors of the same Jury did not appear, therefore others of the By-standers by the Sheriff of the County aforesaid being chosen for this Purpose, at the Request of the said *John Kimp*, and by the Command of the Justices aforesaid newly appointed, whose Names are affiled in the Panel within written, according to the Form of the Statute in such Case lately made and provided; and the Jurors so newly appointed, to wit, *Jonas Phillips*, *William Avent*, *Richard Parcey*, *John Hooper* and *James Newton* being called likewise came, who being chosen, tried and sworn to speak the Truth concerning the Matters within contained, together with the other Jurors aforesaid before impanelled for this Purpose, as to the Issue within written between the said *John Kimp* and the said *Joan Wood* within joined, say upon their Oath, that the said *Joan* is guilty of the Trespass within written, as the said *John* within thereof complains against her: And as to the first Issue within written between the said *John Kimp*, and the said *Humfrey Cruwys*, *William Parker* and *Thomas Wood* within joined, as to the coming with force and Arms, and also the breaking and entering of the Close within mentioned, called *Broad Close*, they say upon their Oath, that the said *Humfrey Cruwys*, *William Parker* and *Thomas Wood* are thereof guilty, as the said *John Kimp* within thereof complains against them: And as to the other Issue within written between the said *John Kimp* and the said *Humfrey Cruwys*, *William Parker* and *Thomas Wood* within likewise joined, the Jurors aforesaid

said upon their said Oath further say, that the Cattle with-
 in mentioned at the within written Time of the taking of
 the said Cattle, were not levant and couchant in and upon
 the within mentioned three Acres of Meadow called *Busb-*
ment Meadow, as the said *John Kimp* within in pleading hath
 alledged; and they assess the Damages of him the said
John Kimp, by occasion of the Trespass within specified,
 besides his Costs and Charges by him about his Suit in this *Curia advi-*
 Behalf laid out to 40 s. and for those Costs and Charges to *sare vult.*
 40 s. And because the Justices here will advise themselves
 of and upon the Premises before they give Judgment there-
 upon, Day is given to the Parties aforesaid here until on
 the Morrow of the Holy *Trinity*, to hear their Judgment
 thereupon, for that the said Justices here are not yet there-
 of, &c. At which Day here come as well the said *John*
 as the said *Humfrey, Joan, William* and *Thomas*, by their
 Attornies aforesaid: And because the Justices here will
 further advise themselves of and upon the Premises before
 they give Judgment thereupon, Day is further given to
 the Parties aforesaid here until in three Weeks from the
 Day of *St. Michael*, to hear their Judgment thereupon,
 for that the said Justices here are not yet thereof, &c. At
 which Day here come as well the said *John* as the said
Humfrey, Joan, William and *Thomas*, by their Attornies a-
 foresaid: And because the Justices here will further advise
 themselves of and upon the Premises before they give Judg-
 ment thereupon, Day is further given to the Parties afore-
 said here until in eight Days of *Saint Hilary*, to hear their
 Judgment thereupon, for that the said Justices are not yet
 thereof, &c. at which Day here come as well the said *John*
 as the said *Humfrey, Joan, William* and *Thomas*, by their
 Attornies aforesaid: And upon this, the Premises being
 seen, and by the Justices here fully understood, it is con-
 sidered, that the said *John* do recover against the said *Hum-*
frey, Joan, William and *Thomas*, his Damages aforesaid to
 40 s. by the Jury aforesaid, in Form aforesaid assessed, and
 also eighteen Pounds 16 s. 8 d. to the said *John* at his Re-
 quest, for his Costs and Charges aforesaid, by the Court
 here of Increase adjudged; which said Damages in the
 Whole amount to 22 l. 16 s. and 8 d. &c.

Final Judg-
 ment for
 Plaintiff.

Easter

PLEADINGS TO THE CASES.

Easter Term in the eighth Year of the Reign of King William the Third. Roll 331.

Hoole against Bell and Others. 1 Ld. Raym. 172.

Winford.

Count in Re-*Yorkshire*, (to wit) *ROBERT Bell* late of *Sheffield* in the County aforesaid, Yeoman,

plevin.

Godfrey Barnes late of *Gleadleys* in the County aforesaid, Yeoman, *John Yelland* late of *Sheffield* aforesaid in the County aforesaid, Yeoman, and *George Turner* late of *Sheffield* aforesaid in the County aforesaid, Yeoman, were summoned to answer to *Mary Hoole*, widow, of a Plea wherefore they took the Cattle of her the said *Mary*, and unjustly detained them against Gages and Pledges, &c. And whereupon the said *Mary* by *John Dickson* her Attorney complains, that the aforesaid *Robert Godfrey*, *John Yelland* and *George*, on the 11th Day of *November* in the 7th Year of the Reign of the Lord the now King, at *Tinsley*, in a certain Place there called the *Stable*, took the Cattle of her the said *Mary*, to wit, four Horses, and unjustly detained them, against Gages and Pledges, until, &c. Whereupon she saith that she is injured, and hath Damage to the Value of 30*l.* and thereupon she brings Suit, &c.

Cognizance
as Bailiffs of
an Executor.

And the aforesaid *Robert Bell*, *Godfrey Barnes*, *John Yelland* and *George Turner*, by *William Banks* their Attorney, come and defend the Force and Injury when, &c. and as Bailiffs of *Robert Knollys*, Gent. Executor of the Will of *Francis Knollys*, Esq; deceased, well acknowledge the taking of the Cattle aforesaid, in the said Place in which, &c. and justly, &c. because they say, that the same Place in which the taking of the Cattle aforesaid is supposed to be done contains, and at the said Time when the taking of those Cattle is supposed to be done, did contain in itself one Stable, with the Appurtenances, in *Tinsley* aforesaid, which said Stable, with the Appurtenances, is, and at the said Time when, &c. and also from Time whereof the Memory of Man is not to the contrary, hath been Parcel of the Manor of *Tinsley*, otherwise *Tinslawe*, with the Appurtenances, in the County aforesaid; of which said Manor, with the Appurtenances, whereof the said Place in which, &c. is, and at the said Time when, &c. was, and also for all the Time aforesaid hath been Parcel, the Right Honourable

Honourable *William* late Earl of *Strafford* deceased, in his Life-time long before the said Time when, &c. to wit, on the 23d Day of *March* in the 20th Year of the Reign of the Lord *Charles* the Second, late King of *England*, &c. (among other Things) was seised in his Demesne as of Fee; and being so seised thereof, and the said late Earl afterwards in his Life time, and before the said Time when, &c. to wit, on the said 26th Day of *March* in the 29th Year of the Reign of the Lord the late King abovesaid, at *Tinsley* aforesaid, by his certain Writing indented, then and there made between the said late Earl, by the Name of the Right Honourable *William* Earl of *Strafford*, Knight of the most noble Order of the Garter, and one of his Majesty's Privy Council, of the one Part, and the said *Francis Knollys* in his Life-time, by the Name of *Francis Knollys* of *Saint Paul's Covent Garden* in the County of *Middlesex*, Esq; of the other Part; one Part of which, sealed with the Seal of the said late Earl, the aforesaid *Robert Bell*, *Godfrey*, *John* and *George* bring here into Court, the Date whereof is the same Day and Year, for and in Consideration of the good and faithful Service of the aforesaid *Francis Knollys* then done, and then afterwards to be done and performed, for the said late Earl, and also of five Shillings of good and lawful Money of *England* to him the said late Earl then in Hand paid, and for divers other good Causes and Considerations him thereunto moving, had given and granted, and by the same Writing indented for himself and his Heirs gave and granted to the said *Francis Knollys* a certain Annuity Grant of a or yearly Rent-Charge of sixty Pounds of good and law- Rent-Charge; ful Money of *England* to be issuing and payable out of all that Manor or Lordship of *Tinsley*, otherwise *Tinslawe* aforesaid, with all and singular its Rights, Members and Appurtenances, in the aforesaid County of *York*, and out of all and singular the Messuages, Cottages, Lands, Tenements and Hereditaments whatsoever within the Towns, Villages, Parishes, Hamlets, Precincts or Territories of *Catcliffe*, *Whitbill*, *Orgrave* and *Bramford*, and every or any of them in the said County of *York*, and out of all and singular the Messuages, Cottages, Houses, Edifices, Buildings, Barns, Stables, Orchards, Gardens, Lands, Tenements, Meadows, Pastures, Feedings, Commons, Common of Pasture, Moors, Marshes, Rents, Reversions, Services, Profits, Commodities, Emoluments and Hereditaments whatsoever, with the Appurtenances, to the said Manor or Lordship belonging, or before used, taken, reputed, occupied or enjoyed as Part or Parcel thereof; To

L

have

PLEADINGS TO THE CASES.

Clause of Distress.

have, hold, and yearly to receive, perceive and take the said Annuity or yearly Rent-Charge of 60 *l.* to him the said *Francis Knollys* and his Assigns, from and immediately after the Date of the same Writing, for and during the Term of his natural Life, to be paid at two Feasts or Days in the Year, that is to say, at the Feast of *Pentecost*, and the Feast of *Saint Martin* the Bishop in Winter, by equal Portions; the first Payment to begin and be made upon the Feast of *Pentecost* next ensuing the Date of the said Writing: And if it should happen that the said Annuity or yearly Rent-Charge of 60 *l.* or any Part thereof, should be in Arrear or unpaid in Part or in the Whole for the Space of 20 Days next after any of the said Feasts in which it ought to be paid as aforesaid, being lawfully demanded, that then and in such Case it should be lawful to and for the said *Francis Knollys*, or his Assigns, into the said Manor or Lordship, Lands, Tenements and Hereditaments before mentioned, or into any Part or Parcel thereof, to enter and distress for the said Annuity or yearly Rent-Charge of 60 *l.* or such Part thereof as should happen to be in Arrear and unpaid; and the Distress or Distresses then and there found, to take, lead, chase and carry away and impound, and impounded to detain and keep until he or they should be fully satisfied and paid the said annual Rent and all Arrearages thereof, if any should be, as by the said Writing indented here brought into Court (among other Things) is more fully manifest and appears: By Virtue of which said Gift and Grant the said *Francis Knollys* was seised of the aforesaid Annuity or yearly Rent of 60 *l.* in his Demesne as of Freehold for the Term of his Life; and thereupon being so seised of the Rent aforesaid, the said *Francis Knollys* afterwards and long before the said Time when, &c. to wit, on the 15th Day of *May* in the 6th Year of the Reign of the Lord *William* the now King and Lady *Mary* late Queen of *England*, &c. at *Tinsley* aforesaid made his last Will and Testament in Writing, and by the same Will made and appointed the said *Robert Knollys* sole Executor thereof; and afterwards and after the Feast of *Pentecost* in the 6th Year of the Reign of the said Lord the King and the late Lady the Queen abovesaid, and before the said Time when, &c. to wit, on the tenth Day of *July* in the same Year at *Tinsley* aforesaid the said *Francis Knollys* died seised of such his Estate of and in the Rent aforesaid; after whose Death, and before the said Time when, &c. to wit, on the 18th Day of *July* in the 6th Year abovesaid, at *Tinsley* aforesaid, the said *Robert Knollys*

took

took upon himself the Burthen of the Execution of the Will aforesaid, and proved the same Will according to the Ecclesiastical Laws of this Kingdom of *England*, and the said *Robert* was Executor of the Will aforesaid at the Time when, &c. and always after the Death of the said *Francis Knollys* hitherto hath been, and yet is so. And because 1020 *l.* of the Rent aforesaid for 17 Years, ending at the said Feast of *Pentecost* in the 6th Year aforesaid to the said *Francis Knollys* in his Life-time, and to the said *Robert Knollys* after the Death of him the said *Francis* for the Space of 20 Days next after that Feast at the same Time when, &c. were in Arrear unpaid, they the said *Robert Bell*, *Godfrey Barnes*, *John Yelland* and *George*, as Bailiffs of the said *Robert Knollys*, Executor of the said Will of the said *Francis*, well acknowledge the taking of the Cattle aforesaid in the said Place in which, &c. and justly, &c. in Parcel of the Lands and Tenements aforesaid (as a Distress of the said *Robert Knollys*, as Executor of the said Will of the said *Francis Knollys*, in Form aforesaid, according to the Form of the Statute in such Case made and provided) charged and bound for the said 1020 *l.* of the Rent aforesaid so being in Arrear; and the said *Robert Bell*, *Godfrey*, *John* and *George* bring here into Court the Letters Testamentary of the said *Francis Knollys*, whereby it sufficiently appears to the Court here that the said *Robert Knollys* is Executor of the Will aforesaid, and ought to have the Administration, &c.

For Rent in Arrear due to the Testator in his Life-time, they acknowledge the taking of the Cattle.

And the said *Mary Hoole* saith, that the said Cognisance of the aforesaid *Robert Godfrey*, *John* and *George* above made, and the Matter in the same contained, are not sufficient in Law for them justly to acknowledge the taking of the Cattle aforesaid in the said Place in which, &c. and that she to that Cognisance in Manner and Form aforesaid made, hath no Necessity, nor is she bound by the Law of the Land to answer; and this she is ready to verify: Wherefore for want of a sufficient Cognisance in this Behalf the aforesaid *Mary Hoole* prays Judgment and her Damages, by occasion of the taking and unjustly detaining the said Cattle, to be adjudged to her, &c. And for Cause of Demurrer in Law upon the said Cognizance the said *Mary*, according to the Form of the Statute in such Case made and provided, shews, and to the Court here demonstrates this Cause following, to wit, for that it doth not appear by the said Cognizance that the said 1020 *l.* were ever demanded, or that any Part thereof was ever demanded, &c.

Cause of Demurrer.

PLEADINGS TO THE CASES.

And the said *Robert Bell, Godfrey Barnes, John Yelland* and *George Turner*, since they sufficient Matter in Law in their said Cognizance to acknowledge justly the taking of the Cattle aforesaid in the said Place in which, &c. have above alledged, which they are ready to prove; which said Matter the said *Mary Hoole* hath not denied, nor in any Manner answered to it, but that Averment hath wholly refused to admit, pray Judgment and a Return of the Cattle aforesaid, together with their Damages, Costs and Charges by them about their Suit in this Behalf laid out, according to the Form of the Statute, to be adjudged to them, &c.

Michaelmas Term in the ninth Year of King William the Third. Roll. 363.

Blackett against Crissop. 1 Ld. Raym. 278.

Tempest.

Debt on a
Replevin
Bond.

Northumberland, (to wit) **CUTHBERT** Crissop late of *Jordan* in the County aforesaid, Yeoman, otherwise called *Cuthbert Crissop* of *Jordan* in the County of *Northumberland*, Yeoman, was summoned to answer *John Blackett*, Esq; late Sheriff of the County aforesaid, of a Plea that he render to him 40 l. which he oweth to him and unjustly detains, &c. And whereupon the said *John* by *Stephen Hales* his Attorney saith, that whereas the said *Cuthbert* on the 3d Day of *September* in the 4th Year of the Reign of the Lord the now King, and the Lady *Mary* the Second, late Queen of *England*, &c. at *Hexham*, by his certain Writing obligatory granted himself, to be held to the said *John*, then being Sheriff of the County aforesaid, by the Name of *John Blackett*, Esq; Sheriff of the County aforesaid, in the said 40 l. to be paid to him the said *John*, when he should be thereunto requested: Nevertheless the said *Cuthbert*, although often requested, hath not yet rendered the said 40 l. to the said *John*, but to render the same to him hath hitherto denied, and yet doth deny, whereupon he saith that he is injured, and hath Damage to the Value of 10 l. and thereupon he brings Suit, &c. And he brings here into Court the Writing aforesaid, which testifies the Debt in Form aforesaid, the Date whereof is the Day and Year aforesaid, &c.

Defendant
craves Over
of the Bond.

And the said *Cuthbert* by *William Carr* his Attorney comes and defends the Force and Injury when, &c. and prays

prays *Oyer* of the Writing aforesaid, and it is read to him, &c. He also prays *Oyer* of the Condition of the same Writing, and it is read to him in these Words: The Condition of this Obligation is such, that if the above-bounden *Cuthbert Crissop* do appear at the next County Court to be holden at *Alnewicke*, and then and there do prosecute his Action with Effect against *William Radcliffe* for wrongful taking and detaining of his Cattle, to wit, two Oxen, as is alledged, and do make Return thereof, if Return shall be adjudged by Law, and also do save and keep harmless the said Sheriff, his Under-Sheriff and Bailiffs, for, touching and concerning the Delivery of his said Cattle, then this Obligation to be void, or else to be in Force; which being read and heard, he the said *Cuthbert* saith, that he ought not to be charged with the Debt aforesaid, by Virtue of the said Writing, because he saith, that at the Time of the making of the said Writing the Cattle aforesaid in the Condition aforesaid above specified, upon the Complaint of him the said *Cuthbert*, were replevied and delivered to him the said *Cuthbert* by the said late Sheriff in his Bailiwick, to wit, at *Hexham* aforesaid; and that at and upon such Delivery of those Cattle, as before is set forth, the Writing aforesaid, with the Condition aforesaid, was required and taken by the said late Sheriff, by Colour of his said Office of Sheriff, and by Pretence of the Statute set forth in the Parliament of the Lord *Edward* the First, formerly King of *England*, holden at *Westminster* in the County of *Middlesex* in the 13th Year of his Reign; which said Condition above recited is not such as, but other than by that Statute is appointed and ordained in such Case to be taken and to be made, the same Condition in itself containing the said Clause or Matter of saving and keeping harmless the said Sheriff, his Under-Sheriff and Bailiffs, for, touching and concerning the Delivery of the said Cattle; which said Matter ought not to be contained in the said Condition, by the Form of that Statute, by which the Writing aforesaid is void and of no Effect in Law; and this he is ready to verify: Wherefore he prays Judgment if he ought to be charged with the Debt aforesaid, by Virtue of the said Writing, &c.

The Condition.

Plea that the Bond was given to the Plaintiff upon a Replevin made, &c. by pretext of the Stat. 13 Ed. 1.

And that it is not warranted by that Statute, because it is to indemnify the Sheriff, &c.

Demurrer.

Joinder in Demurrer.

PLEADINGS TO THE CASES.

Trinity Term in the 7th Year of King William the Third,
Roll 187.

Britten against Cole. 1 Ld. Raym. 305.

Trespafs.

Gloucestershire, (to wit) **J**OH^N Britten complains of *Thomas Cole* in the Custody of the Marshal of the *Marshalsea* of the Lord the King, being before the King himself, for that he on the 20th Day of *March* in the 7th Year of the Reign of the Lord *William* the Third, now King of *England*, &c. at *Hannam* in the Parish of *Bitton* in the County aforesaid, with Force and Arms the Cattle, that is to say, 43 Sheep and two Lambs of him the said *John Britten* of the Price of sixteen Pounds took and drove away, and other Wrongs to him did, against the Peace of the said Lord the now King, to the Damage of him the said *John* of 40*l.* and thereupon he brings Suit, &c.

Special Justification under a *Levari facias* grounded on an Outlawry certified into the Court of Exchequer.

And now here at this Day, to wit, *Friday* next after three Weeks of the Holy *Trinity* in this same Term, until which Day the said *Thomas* had leave to imparl to the Bill aforesaid, and then to answer, &c. before the Lord the King at *Westminster* come as well the said *John* by his said Attorney, as the said *Thomas* by *Philip Hodges* his Attorney, and the said *Thomas* defends the Force and Injury when, &c. and as to the coming with Force and Arms, and whatsoever that is against the Peace of the said Lord the now King, saith that he is not guilty; and of this he puts himself upon the Country, and the said *John Britten* likewise: And as to the Residue of the Trespafs aforesaid above supposed to be done, he the said *Thomas Cole* saith, that the said *John Britten* ought not to have or maintain his said Action thereof against him, because he saith, that before the said Time when the Trespafs aforesaid is above supposed to be done, to wit, on the 12th Day of *February* in the 6th Year of the Reign of the said Lord the now King, a certain Writ of the said Lord the now King of *Levari facias*, issued out of the Court of Exchequer of him the said Lord the King at *Westminster*, then being in the County of *Middlesex*, directed to the Sheriff of *Gloucestershire*; by which said Writ the said Lord the King reciting, that whereas *Richard Cocks*, Bart. then late Sheriff of *Gloucestershire* aforesaid, by Virtue of the Writ of him the said Lord the King of *Capias Utlagatum*, issuing out of the Court of the said Lord the King of Common

Bench

Bench at *Westminster* against *Francis Creswick* of *Hannam's Court* within the Parish of *Bitton* in the County aforesaid, Esq; outlawed in the County of *Somerset* on the 12th Day of *June* in the 5th Year of the Reign of the Lord the King and of the Lady *Mary* late Queen of *England*, &c. at the Suit of *Thomas Cole* the now Defendant, and *Mary* his Wife, of a Plea of Debt, to the aforesaid late Sheriff directed, on the 28th Day of *September* in the 5th Year abovesaid, took and seised into the Hands of the said Lord the King and Lady the Queen one capital Messuage or Tenement called *Hannam's Court*, with all the Barns, Stables, Outhouses, Edifices, Gardens, Orchards and Appurtenances to the same belonging, one Close of Pasture commonly called *Hill-house*, containing by Estimation 14 Acres; one other Close of Pasture called the *New Enclosure*, containing by Estimation eight Acres, (and several other Grounds) all and singular which Premises aforesaid, with the Appurtenances, were of the clear yearly Value of 54 *l.* in all their Issues beyond Reprises, of the Lands and Chattels of the said *Francis Creswick*, as by the Transcript of the said Writ of *Capias Utlagatum*, and the Return thereof, and of a certain Inquisition thereupon taken, certified into the Exchequer of the said Lord the now King, and there in the Custody of the said Lord the King remaining, more fully appears: The aforesaid Lord the King willing to be answered and satisfied of the Rents, Issues and Premises aforesaid, (as is right) commanded the said Sheriff of *Gloucestershire* by the said Writ of *Levari facias*, that he should not omit, because of any Liberty, but that he should enter into the same, and should cause to be made, collected and levied, all and singular the Rents, Issues and Profits of the Premises aforesaid, with the Appurtenances, and of every Parcel thereof forthcoming, from the said Time of taking thereof into the Hands of the said Lord the King, until the Feast of the Annunciation of the Blessed Virgin *Mary* then next to come, (which was not thereof answered to the said Lord the King) for the Proportion of Time, and according to the Rate and yearly Value abovementioned, so that when he should have levied that Money, he should have the same before the Barons of the Exchequer of the said Lord the King at *Westminster* from *Easter Day* in one Month then next to come in the Court of the Lord the King then there, to be paid to the Use of him the said Lord the King, and that he should have there then that Writ: By Virtue of which said Writ

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of *Levari facias*, *Nathaniel Rider*, Esq; then and yet being Sheriff of *Gloucestershire* aforesaid, after the issuing of the same Writ, to wit, on the 7th Day of *March* in the 7th Year of the Reign of the said Lord the now King, at *Bitton* aforesaid, made his Warrant in Writing under the Seal of the Office of him the said Sheriff, directed to all the Bailiffs, Tythingmen, and other Officers of the same County, and also to *Anthony Powell*, *John Cooke*, *John Okes* and *Joseph Powell* his Bailiffs; by which the said Sheriff commanded the said Bailiffs and other Officers aforesaid, that they should cause to be made, collected and levied, all and singular the Rents, Issues and Profits of the Premises aforesaid, in the Writ aforesaid above mentioned, with the Appurtenances, and of every Parcel thereof forthcoming, from the said Time of taking thereof into the Hands of the said Lord the now King, until the Feast of the Annunciation of the Blessed Virgin *Mary* then next to come, for the Proportion of Time, and according to the Rate and yearly Value above-mentioned, so that the said *Nathaniel Rider* the said Sheriff might have the same before the Barons of the Exchequer of the said Lord the King at *Westminster* from *Easter Day* in one Month then next to come in the Court of the said Lord the King then there, to be paid to the Use of him the said Lord the King, according to the Command of the Writ aforesaid. And the said *Thomas Cole* further saith, that the said capital Messuage or Tenement called *Hannam's Court*, the said several Closes and Parcels of Pasture, and the Rest of the Premises in the Writ of *Levari facias* aforesaid mentioned, at the Time of the issuing out of the same Writ at the several Times of pronouncing the said Outlawry, and of issuing out the said Writ of *Capias Utlagatum* recited in the said Writ of *Levari facias*, were and yet are lying and being in *Hannam* aforesaid, within the said Parish of *Bitton* in the County of *Gloucester* aforesaid: And because the said 43 Sheep and two Lambs, after the issuing out of the said Writ of *Levari facias*, and the making of the said Warrant, and before the said Feast of the Annunciation of the Blessed Virgin *Mary*, to wit, at the said Time when, &c. were in the said Close of Pasture called *Hill-house* in *Hannam* in the Parish of *Bitton* aforesaid, being Parcel of the Premises aforesaid in the said Writ of *Levari facias* before mentioned, there feeding levant and couchant, and he the said *Thomas Cole* then and there requested the said *Anthony Powell* and *John Powell* to take and drive away the said 43 Sheep and two Lambs, to make of the Issues and Profits

profits aforesaid, according to the Command of the said Writ of *Levari facias* to the said Sheriff directed, and the Warrant aforesaid made by the Sheriff; whereupon the said *Anthony Powell* and *John Powell* the Sheep and Lambs aforesaid at the said Time when, &c. at *Hannam* in the Parish of *Bitton* aforesaid took and drove away, which are the same Residue of the Trespass aforesaid whereof the said *John Britten* above complains against him the said *Thomas Cole*; and this he is ready to verify: Wherefore he prays Judgment if the said *John Britten* ought to have or maintain his said Action thereof against him, &c.
Demurrer and Joinder in Demurrer.

pleas before the Lord the King at Westminster of the Term of the Holy Trinity in the ninth Year of the Reign of William, now King of England, &c. Roll. 45.

Vinkestone against Ebden. 1 Ld. Raym. 384.

City of *York*, (to wit) **B**E it remembred, that heretofore, to wit, in the Term of *Michaelmas* last past before the Lord the King at *Westminster* came *Hubert Vinkestone* by *Geoffry Vibergh* his Attorney, and brought here into the Court of the said Lord the King when there his certain Bill against *James Ebden* in the Custody of the Marshal, &c. of a Plea of Trespass upon the Case; and there are Pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said Bill follows in these Words, to wit, City of *York*, to wit, *Hubert Vinkestone* complains Count in Trover for an Anchor, Sails, and 3 Cables. of *James Ebden* in the Custody of the Marshal of the *Mar-shalsea* of the Lord the King, being before the King himself, for that, to wit, that whereas the said *Hubert* the last Day of *August* in the 7th Year of the Reign of the Lord *William*, now King of *England*, &c. was possessed of one anchor, and six Sail Cloths and three Cable Ropes, of the value of 10 l. of lawful Money of *England*, as of his own proper Goods and Chattels; and the said *Hubert* being so possessed thereof, afterwards, to wit, the same Day and Year at the City of *York* aforesaid casually lost the said Goods and Chattels out of his Hands and Possession; which said Goods and Chattels afterwards, to wit, the first Day of *October* in the 7th Year aforesaid, at the City of *York* aforesaid, came to the Hands and Possession of the said *James* by finding: Nevertheless the said *James* knowing the

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the Goods and Chattels aforesaid to be the proper Goods and Chattels of him the said *Hubert*, and of Right to belong and appertain to him, yet contriving craftily and subtilly to deceive and defraud him the said *Hubert* of the Goods and Chattels aforesaid, hath not delivered the said Goods and Chattels to the said *Hubert*, altho' afterwards, to wit, the same Day and Year last mentioned, at the City of *York* aforesaid, he was requested by him the said *Hubert*, but afterwards, to wit, the same Day and Year last mentioned, at the City of *York* aforesaid, converted and disposed of the Goods and Chattels aforesaid to his own proper Use, to the Damage of him the said *Hubert* of 50*l.* and thereupon he brings Suit, &c.

Imparlance.

Not guilty.

Nisi prius.

And now here at this Day, to wit, *Wednesday* next after three Weeks of Saint *Michael* in this same Term, until which Day the said *James* had leave to imparl to the Bill aforesaid, and then to answer, &c. come as well the said *Hubert Vinkestone* by his Attorney, aforesaid, as the aforesaid *James Ebdon* by *Henry Clarebrough* his Attorney, and the said *James* defends the Force and Injury when, &c. and saith that he is not thereof guilty; and of this he puts himself upon the Country, and the aforesaid *Hubert* likewise, &c. Therefore let a Jury come before the Lord the King at *Westminster* on *Wednesday* next after eight Days of the Purification of the Blessed Virgin *Mary*; and who neither &c. to recognize, &c. because as well, &c. The same Day is given to the Parties aforesaid there, &c. At which Day the Jury between the Parties aforesaid of the Plea aforesaid was thereupon respited between them here until *Wednesday* next after fifteen Days of *Easter* then next following, unless the Justices of the said Lord the King, assigned to take the Assizes in the City aforesaid, by Form of the Statute, &c. on *Wednesday* the 11th Day of *March* at the Guildball of the City of *York* aforesaid, shall first come. And now here at this Day come as well the aforesaid *Hubert Vinkestone* as the aforesaid *James Ebdon* by their Attornies aforesaid, and the aforesaid Justices before whom, &c. have sent here their Record in these Words, (to wit) Afterwards on the Day and at the Place within contained, before *John Turton*, Knt. one of the Barons of the Exchequer of the Lord the King, and *Thomas Hæfletyne*, Esq; to the same *John Turton* and *Edward Nevill*, Knt. one of the Justices of the said Lord the King of the Bench, assigned to take the Assizes in the County of the City of *York*, by Form of the Statute, &c. being associated for this Turn, by Virtue of the Writ of the said Lord the King of *Si non omnes*, &c. came as well

well the within named *Hubert Vinkerstone* as the within written *James Edden* by their Attornies within contained ; and the Jury, whereof Mention is within made, being called likewise came, who being chosen, tried and sworn to speak the Truth concerning the Matter within contained, say upon their Oath, that the aforesaid *Hubert* within Special Ver- mentioned, at the Time within written in the Declaration dict. within mentioned, was possessed of the Goods and Chattels in the Declaration of him the said *Hubert* within specified, as of his own proper Goods and Chattels. And the said Jurors upon their Oath further say, that the Town of *Newcastle upon Tyne* is an antient Town, and that the Port of *Newcastle upon Tyne* is an antient Port, under the Care, Conservation and Government of the Mayor and Burgessees of that Town ; that by the Custom within the same Town, from Time whereof the Memory of Man is not to the contrary, the Mayor and Burgessees of the said Town, at their own proper Costs and Charges have been used and accustomed, and are obliged to repair and cleanse the Port, and to render it convenient for the safe and secure Navigation and Remaining of the Ships there ; and that in Consideration thereof the Mayor and Burgessees of the Town aforesaid, for all the Time aforesaid have had and received, and have been used and accustomed, and ought to have and receive, a Duty or Toll of five Pence by the Chaldron for all Coals exported from the Port aforesaid, or put and loaded in or upon any Ship with an Intention to be exported, and that the Officer called the Water-Bailiff of the said Town of *Newcastle* for the Time being, or his Deputy, from the Time aforesaid hath distrained, and hath been used and accustomed to distrain any Goods and Chattels whatsoever distrainable by Law of any Person's whatsoever exporting or loading upon a Ship to be exported, the Goods and Merchandizes aforesaid, and refusing to pay the Duty or Toll aforesaid, for Non-payment of the said Duty or Toll. And the Jurors aforesaid upon their Oath further say, that the aforesaid *Hubert* before the said Time within specified in the Declaration within written, loaded a certain Ship of him the said *Hubert*, called the *William and Thomas* of *Lyme*, with fifty Chaldrons of Coals of the Value of 27*l.* and 10*s.* within the Port of *Newcastle* aforesaid, with an Intention to export those Coals from the said Port. And the said Jurors upon their said Oath further say, that the aforesaid *James*, at the said Time when, &c. within mentioned in the Declaration within written, and long before, was the Officer of the said Town and

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and Port called the Water-Bailiff, constituted in due Manner by the Mayor and Burgesſes aforeſaid; and the ſame *James*, finding the Ship aforeſaid loaded with the ſaid Coals as aforeſaid ready to be exported, asked and demanded of the ſaid *Hubert* the ſaid Duty or Toll for the ſaid Coals, and the ſaid *Hubert* abſolutely reſuſed to pay the ſaid Duty or Toll, and thereupon the ſaid *James*, for and in the Name of a Diſtreſs, took and yet detains the Goods and Chattels within mentioned in the Declaration within written, being Part or Parcel of the Tackle belonging to the ſaid Ship, for the Non-payment of the ſaid Duty or Toll. And the ſaid Jurors upon their ſaid Oath further ſay, that the Goods and Chattels within mentioned in the Declaration within written, at the Time of the taking thereof were worth 7 *l.* and 10 *s.* But whether upon the whole Matter aforeſaid by the Jurors aforeſaid in Form aforeſaid found the ſaid Goods and Chattels are in ſuch Caſe diſtrainable by the Law of the Land, or not, the Jurors aforeſaid are wholly ignorant, and thereupon pray the Advice and Conſideration of the Court here: And if upon the whole Matter aforeſaid, in Form aforeſaid found, it ſhall ſeem to the Court here that they are not diſtrainable in ſuch Caſe, then the ſaid Jurors ſay upon their ſaid Oath, that the ſaid *James* is guilty of the Premiſſes within laid to his charge, in Manner and Form as the aforeſaid *Hubert* within thereof complains againſt him; and then they aſſeſs the Damages of him the ſaid *Hubert*, by the Occaſion within written, beſides his Coſts and Charges by him laid out about his Suit in this Behalf to 7 *l.* 10 *s.* and for thoſe Coſts and Charges to 40 *s.* But if upon the whole Matter aforeſaid, by the ſaid Jury in Form aforeſaid found, it ſhall ſeem to the Court here that the ſaid Goods and Chattels are diſtrainable by Law in ſuch Caſe, then the Jurors aforeſaid upon their ſaid Oath further ſay, that the aforeſaid *James* is not guilty of the Premiſſes within laid to his charge, as he the ſaid *James* within by Pleading for himſelf hath alledged: And becauſe the Court of the ſaid Lord the King now here are not yet adviſed, &c.

Trin. 10 W. 3. Roll 1659.

Lawrence againſt Dodwell. 1 *Ld. Raym.* 734.

Count in
Dower.

Glouceſterſhire, (to wit,) *D* *Ulcibella Lawrence*, Widow, who was the Wife of *William Lawrence*, Eſq; by *Joſeph Tate* her Attorney, demands againſt

against *William Dodwell, Esq; George Guinnot, Gent. Thomas Longdon, Gent. and Randall Ploydell, Gent.* the third Part of six Messuages, six Gardens, 210 Acres of Land, 142 Acres of Meadow, 114 Acres of Pasture, and of three Acres of Wood, with the Appurtenances, in *Badgworth, Sberington Magna, Sberington Parva, Bentum, Upbatberley, Wythington and Chedworth*, as the Dower of her the said *Dulcibella*, of the Endowment of the aforesaid *William*, formerly her Husband, &c.

And the aforesaid *William Dodwell, George, Thomas and Randall*, by *Edward Morse* their Attorney come and say, that the aforesaid *Dulcibella* ought not to have her Dower of the Tenements aforesaid, with the Appurtenances, whereof, &c. of the Endowment of the said *William Lawrence*, formerly her Husband, against them, because they say, that the said *William Lawrence* formerly her Husband, &c. was seised (amongst other Things) in his Demesne as of Fee of and in the Manor of *Sberington Parva*, with the Appurtenances, and of and in one Messuage, two Gardens, two Orchards, 50 Acres of Land, 100 Acres of Meadow and 50 Acres of Pasture, with the Appurtenances, in the Parish of *Badgworth* in the County aforesaid; and being so seised thereof, on the last Day of *April* in the Year of our Lord 1697, at *Sberington Parva* aforesaid, made his last Will and Testament in Writing, and by his said Will willed and devised the Manor and Tenements aforesaid, with the Appurtenances, to the said *Dulcibella*: To have and to hold to her the said *Dulcibella* during her Widowhood. And afterwards the aforesaid *William Lawrence* at *Sberington Parva* aforesaid died so seised of such his Estate thereof, after whose Death the said *Dulcibella* entred into the Manor and Tenements aforesaid, with the Appurtenances, and was and yet is seised thereof in her Demesne as of her Freehold for the Term of her Widowhood, by Virtue of the Devise aforesaid: with this, that they the said *William Dodwell, George, Thomas and Randall* will verify, that the said Devise by the said *William Lawrence* to her the said *Dulcibella* of the Manor and Tenements aforesaid, with the Appurtenances, in Form aforesaid made, was in full Recompence of the whole Dower of the said *Dulcibella* happening, of all the Tenements which were of the said *William*, formerly her Husband, &c. and this they are ready to verify: Wherefore they pray Judgment if the aforesaid *Dulcibella* ought to have her Dower of the Tenements aforesaid, with the Appurtenances, whereof, &c. against them, &c.

Plea in Bar.
That the Husband devised Land to Plaintiff, and avers the the same was in lieu of Dower.

Demurrer, and Joinder in Demurrer.

Pleas

Pleas before the Lord the King at Westminster of the Term of the Holy Trinity in the twelfth Year of the Reign of William the Third, now King of England, &c. Roll 464, or 414.

Broughton against Langley. 2 Ld. Raym. 873.

Yorkshire, (to wit) **B**E it remembred, that heretofore, to wit, in the Term of *Easter* last past before the Lord the King at *Westminster* came *Humfrey Broughton* by *William Midgley* his Attorney, and brought here into the Court of the said Lord the King then there his certain Bill against *Abraham Langley*, Gent. in Custody of the Marshal, &c. of a Plea of Trespass and Ejectment; and there are Pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said Bill follows in these Words, to wit, *Yorkshire*, to wit, *Humfrey Broughton* complains of *Abraham Langley* in Custody of the Marshal of the *Marshalsea* of the Lord the King, being before the King himself, for that, to wit, that whereas one *John Ramsden* the younger on the first Day of *April* in the 12th Year of the Reign of our Lord *William the Third*, now King of *England*, &c. at *Hipperholme with Briggbouse* within the Parish of *Hallifax* in the County aforesaid, had demised, granted and to Farm lett to the said *Humfrey* three Messuages, twenty Acres of Land, twenty Acres of Meadow and twenty Acres of Pasture, with the Appurtenances, situate, lying and being at *Hipperholme with Briggbouse* aforesaid within the Parish of *Hallifax* aforesaid; To have and to hold the Tenements aforesaid, with the Appurtenances, to the said *Humfrey* and his Assigns, from the first Day of *March* last past until the full End and Term of five Years from thence next ensuing and fully to be compleat and ended; by Virtue of which said Demise the said *Humfrey* entred into the Tenements aforesaid, with the Appurtenances, and was possessed thereof until the said *Abraham* afterwards, to wit, on the same first Day of *April* in the Year aforesaid, at *Hipperholme with Briggbouse* aforesaid, within the Parish of *Hallifax* aforesaid in the County aforesaid, with Force and Arms into the Tenements aforesaid, with the Appurtenances, in and upon the Possession of him the said *Humfrey* thereupon entred, and him the said *Humfrey* from his Farm aforesaid, his Term thereof not being ended, ejected and removed, and him the said *Humfrey* from his Possession aforesaid so ejected and removed, kept out, and yet keeps out thereof, and other

Ejectment.

other Wrongs then and there to him did, against the Peace of the said Lord the now King, to the Damage of him the said *Humfrey* of 40 l. and thereupon he brings Suit, &c.

And now here at this Day, to wit, *Wednesday* next after the Morrow of the Holy *Trinity* in this same Term, until which Day the said *Abraham* had leave to imparl to the said Bill, and then to answer, &c. before the Lord the King at *Westminster* come as well the said *Humfrey* by his Attorney aforesaid, as the said *Abraham* by *Joseph Banks* his Attorney; and the said *Abraham* defends the Force and Injury when, &c. and saith that he is not thereof guilty; and of this he puts himself upon the Country, and the aforesaid *Humfrey* likewise, &c. Therefore let a Jury thereupon come before the Lord the King at *Westminster* on *Wednesday* next after three Weeks of the Holy *Trinity*, and who neither, &c. to recognize, &c. because as well, &c. The same Day is given to the Parties aforesaid there, &c. Afterwards the Process is thereupon continued between the Parties aforesaid of the Plea aforesaid, by the Jury being thereupon respited between them, before the Lord the King at *Westminster* until *Wednesday* next after three Weeks of Saint *Michael*, unless the Justices of the Lord the King, assigned to take the Assizes in the County aforesaid, shall first come, on *Saturday* the twentieth Day of *July* at the Castle of *York* in the County aforesaid, by Form of the Statute, &c. for want of Jurors. At which Day before the Lord the King at *Westminster* cometh the said *Humfrey* by his Attorney aforesaid. And the said Justices of the Lord the King before whom at the Assizes, &c. have sent here their Record before them had in these Words, to wit, Afterwards on the Day and at the Place within contained, before *John Turton*, Knt. one of the Justices of the Lord the King, assigned to hold Pleas before the King himself, and *John Blencowe* Knt. one of the Justices of the said Lord the King of the Bench, Justices of the said Lord the King, assigned to hold Pleas before the King himself, come as well the within named *Humfrey* as the within written *Abraham* by their Attornies within contained. And the Jurors of the Jury, whereof Mention is within made, being called, certain of them, to wit, *Henry Woodbouse*, *Robert Gill*, *Stephen Day*, *John Wright*, *Anthony Worrell*, *George Helliwell*, *Nathaniel Dyson* and *Richard Smeaton*, came, and are sworn upon that Jury: And because the Rest of the Jurors of the said Jury did not appear, therefore others of the By-standers by the Sheriff of the County aforesaid

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Special Verdict

aforesaid to this being chosen, at the Request of the said *Humfrey*, and by the Command of the Justices aforesaid are newly appointed, whose Names are affixed in the Panel within written, according to the Form of the Statute in such Case lately made and provided; And the Jurors so newly appointed, to wit, *Christopher Raper*, *William Eyre*, *William Cocksbott* and *John Brown* being called likewise came, who being chosen, tried and sworn to speak the Truth concerning the Matter within contained, together with the other Jurors aforesaid before impanelled and sworn, say upon their Oath, that before the said Time of the Treasures and Ejectment aforesaid above supposed to be done, one *Robert Ramsden*, the Grandfather of the said *John Ramsden* the younger, the Lessor of the Plaintiff, in his Life-time was seised of and in the Tenements in the Declaration aforesaid mentioned, with the Appurtenances, in his Demesne as of Fee; and being so seised thereof, on the sixth Day of *April* in the Year of our Lord one Thousand six Hundred and eighty-nine, made his last Will and Testament in Writing, and by the same gave and devised the Tenements aforesaid, with the Appurtenances, in these *English* Words following, to wit, I do hereby give, devise and bequeath unto *John Stancliffe* of *Bailey-Hall* in *Southworne*, and to *Robert Ramsden* my second Son, and their Heirs and Assigns, all those my Messuages or Tenements, with the Appurtenances, at *Norwood-green*, and all the Houses, Buildings, Lands, Closes and Grounds to the same belonging, now in the Tenures or Occupations of *Jeremiah Robinson* and *Robert Wilson*, or their Assigns; and I do hereby express, publish and declare, that the said *John Stancliffe*, and *Robert Ramsden* my Son, and their Heirs, and the Survivor of them and his Heirs, shall by Force and Virtue of this my last Will stand and be seised of the said Messuages or Tenements, to all the Uses, Behoofs, Intents and Purposes herein after mentioned, that is to say, first of Intent and Purpose that they shall permit and suffer the said *George Ramsden* my Son to have, receive and take the Rents, Issues and Profits of the said Messuages and Tenements, for and during the Term of his natural Life, and after the Decease of the said *George* my Son, shall stand seised thereof to the Use and Behoof of the Heirs of the Body of the said *George* my Son lawfully begotten and to be begotten; and for Default of such Issue, to the Use and Behoof of the said *John Ramsden* and *Robert Ramsden* my Sons, and of their Heirs and Assigns for ever, equally to be

be divided amongst them; provided always and upon Condition, that if it shall fortune the said *George* my Son to marry, and to take to Wife any Woman during his Life that shall have *bona fide* one or more hundred Pounds, that then the said *John Stantcliffe*, and *Robert Ramsden* my Son, and the said *George*, shall have Power by Virtue of this my Will to make a Jointure to and for such Wife of ten Pounds a Year of the same Lands for every Sum of one hundred Pounds such Woman or Wife shall *bona fide* have of her own Portion and Right, for and during the Term of the natural Life of such Wife, and after to the Heirs of the Body of the said *George* upon such Wife; any Thing herein to the contrary notwithstanding: And amongst other Things the said *Robert Ramsden* the Grandfather, by his same last Will further gave and devised other Tenements, with the Appurtenances, in these *English* Words following, to wit, I do hereby devise and bequeath unto *Robert Ramsden* my second Son, and to his Heirs and Assigns for ever, all those my Messuages, Lands, Tenement and Hereditaments, with all their Appurtenances, lying and being at *Norwoodgreen* in *Hipperholme* in the said County of *York*, now in the Tenure or Occupation of *Richard Riddlesden*, or his Assigns, upon Condition nevertheless, and to the Intent and Purpose, that he the said *Ramsden* my Son, his Heirs and Assigns, shall permit and suffer *George Ramsden* my youngest Son, his Heirs and Assigns, peaceably and quietly at all Times hereafter for ever to occupy, possess and enjoy one Close of Land called *Paradice* in *Hipperholme* aforesaid, now or commonly occupied with a Messuage near thereunto called *Lane Ends*, and to take the Rents, Issues and Profits of the same Close to his the said *George's* and his Heirs own Use and Uses for ever; or in Default thereof, my Will and Mind is, that the said *George* my Son and his Heirs shall from and after any Disturbance or Molestation to him or them made or given by the said *Robert Ramsden* my Son, his Heirs or Assigns, in the peaceable Enjoyment of the said Close called *Paradice*, enter into one Messuage, Tenement or Farm, Part of the said Messuages, Lands and Tenements last above mentioned, and now or late in the Tenure or Occupation of one *Henry Waddington*, or his Assigns, and to take the Rents, Issues and Profits thereof, until such Times as the said *Robert Ramsden* my Son and his Heirs shall forbear and give over such Molestation or Disturbance, and give him the said *George* my Son and his Heirs Security that he the said *Robert* my Son, or his Heirs, nor any of them, shall at any

M

Time

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'Time thereafter disturb or molest the said *George* my Son, or his Heirs, in the peaceable Enjoyment of the said Close called *Paradice*, as by the last Will and Testament aforesaid to the Jurors aforesaid in Evidence shewn, among other Things, is more fully manifest and appeareth; and the Jurors of the said Jury upon their said Oath further say, that the said *Robert Ramsden* had Issue of his Body lawfully begotten, his three Sons, to wit, *John*, *Robert* and *George Ramsden*, and that the said *George*, after the Death of the said *Robert Ramsden* his Father, which happened in the Year of our Lord 1689, entred into the Tenements aforesaid, with the Appurtenances, and held and enjoyed the same, and took and received the Rents and Profits thereof, and converted the same to his own Use during his Life, according to the Intention of the last Will aforesaid; and in his Life-time, to wit, on the first Day of *April* in the Year of our Lord 1690, at *Hipperbolme with Briggbouse* aforesaid, by a certain Indenture then and there made between the said *George Ramsden*, by the Name of *George Ramsden of Heath in Skircoate* within the Parish of *Hallifax* in the County of *York*, Yeoman, of the one Part, and one *Roger Reeve*, by the Name of *Roger Reeve of Barnards-Inn, London*, Gent. of the other Part, and to the said Jurors in Evidence shewn, for and in Consideration of five Shillings of lawful Money of *England* by the said *Roger Reeve* in Hand paid to the said *George Ramsden*, before the Scaling and Delivery of the same Indenture, and for divers other good Causes and Considerations him thereunto moving, the said *George Ramsden* bargained and sold the Tenements aforesaid, with the Appurtenances, (among other Things) to the said *Roger Reeve*; To have and to hold the Tenements aforesaid, with the Appurtenances, to him from the Day next before the Day of the Date of the same Indenture, for and during the Term of one whole Year from thence next following fully to be compleat and ended; by Virtue of which said Bargain and Sale, and also by Force of the Statute for transferring of Uses into Possession, the said *Roger Reeve* was possessed of the Tenements aforesaid, with the Appurtenances, as the Law requireth; and being so possessed thereof, afterwards, to wit, on the second Day of *April* in the Year of our Lord 1690 aforesaid, at *Hipperbolme with Briggbouse* aforesaid, by a certain other Indenture then and there made between the said *George Ramsden*, by the Name of *George Ramsden of Heath in Skircoate* within the Parish of *Hallifax* in the County of *York*, Yeoman, of the first Part, and the said *Roger Reeve*, by the Name of

Roger

Roger Reeve of Barnards-Inn, London, Gent. of the second Part, and one *William Wilton*, by the Name of *William Wilton of Blead-Syke in Hipperbolme with Briggbouse* in the said County, Yeoman, of the third Part; and to the said Jurors in Evidence shewn, the said *George Ramsden*, to the Intent and Purpose to dock and cut off all Intails and Estates-tail then before created, limited or made of or upon the Tenements aforesaid, with the Appurtenances, and all and every Remainder and Remainders, Reversion and Reversions, and other Limitations whatsoever thereupon limited, being or depending, and for settling and establishing the same to the Uses in and by the same Indenture expressed, mentioned, limited and declared, and for other good Causes and Considerations him thereunto moving, he the said *George Ramsden* released and confirmed, and by the said Indenture did release and confirm to the said *Roger Reeve* the Tenements aforesaid, with the Appurtenances; To have and to hold those Tenements, with the Appurtenances, to the said *Roger Reeve* and his Heirs until a Common Recovery might be had and perfected thereof, and then to all such Uses, Intents, Limitations and Purposes as were afterwards in the same Indenture mentioned, limited and declared, and to no other Use, Intent or Purpose whatsoever; and by the same Indenture it was covenanted, granted, concluded and fully agreed by and between all the said Parties to the same Indenture, and the said *George Ramsden* and *Roger Reeve* did covenant, promise and grant to and with the said *William Wilton*, that they the said *George Ramsden* and *Roger Reeve*, before the End of the Term of the Holy Trinity next following the Date of the same Indenture, at the proper Costs and Charges in the Law of the said *George Ramsden*, or his Assigns, would suffer, or cause to be suffered, one or more perfect Recovery or Recoveries of all and singular the Tenements aforesaid, with the Appurtenances, by such Names, Numbers of Acres and Quantities of Things, as by fit Council should be advised, wherein the said *William Wilton* should be Demandant against the said *Roger Reeve*, and that the said *Roger* should appear *gratis*, and vouch to Warranty him the said *George Ramsden*, who likewise should appear and vouch to Warranty the Common Vouchee, who also should appear, and after having had leave to imparl, should make Default, and depart in Contempt of the Court, by which, one or more Recovery or Recoveries, as hath been used and accustomed in such Cases, should be had and suffered, and that the said Recovery or Recoveries so as aforesaid to be had and suffered by and between the said Parties, or any of them,

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should be and enure, and by that Indenture it was declared to be and enure to the Use and Behoof of the said *George Ramsden* his Heirs and Assigns for ever, and to no other Use or Uses, Intents or Purposes whatsoever; as by the same Indenture to the said Jurors in Evidence shewn is more fully manifest and appeareth; and that by reason of the Premises the said *Roger Reeve* was seised of the Tenements aforesaid, with the Appurtenances, as the Law requireth; and being so seised thereof, the said *William Wilton* afterwards, to witt, on the ——— Day of ——— in the second Year of the Reign of the said Lord the now King and the Lady *Mary* late Queen of *England*, sued forth out of their Court of Chancery at *Westminster* in the County of *Middlesex* a certain Writ of them the said Lord the King and Lady the Queen of Entry *Sur Disseisin in le Poss*, against the said *Roger Reeve*, of the Tenements aforesaid with the Appurtenances, amongst other Things, directed to the then Sheriff of *York* aforesaid, by the Names of seven Messuages, ten Gardens, fifty Acres of Land, twenty Acres of Meadow, fifty Acres of Pasture, sixty and six Shillings Rent, Common of Pasture for all Cattle, and Common of Turbary with the Appurtenances, in *Skircoate*, *Hipperholme with Briggbouse*, and *Southwrome* in the Parish of *Hallifax*, as his Right and Inheritance, by which said Writ it was commanded to the said Sheriff, that he should command the said *Roger* that justly and without Delay he should render to the said *William Wilton* the Tenement, Rent and Commons aforesaid, with the Appurtenances, which he then claimed to be his Right and Inheritance, and into which the said *Roger* had then not had Entry, but after the Disseisin which *Hugh Hunt* thereof unjustly and without Judgment made to the said *William* within thirty Years then last past, as he then said, and whereupon he then complained that the said *Roger Reeve* then unjustly deforced him thereof, and unless he should do it, and the said *William Wilton* should then make him the Sheriff secure concerning the prosecuting of his Claim, then he should summon by good Summoners the said *Roger Reeve*, that he should be before the Justices of the said then King and Queen at *Westminster* aforesaid ——— then next following, to shew wherefore he had not done it, and that he should then have there the Summoners, and that Writ: At which Day before *Henry Pollexfen*, Knt. and his Companions, then Justices of the then King and Queen of the Bench at *Westminster* aforesaid, came as well the said *William Wilton* as the said *Roger Reeve* in their proper Persons; and the

the Sheriff, to wit,—— returned the Writ aforesaid, executed in the Form following, that is to say, that the said *William Wilton* had found to the same Sheriff Pledges of prosecuting his said Writ, to wit, *John Doe* and *Richard Roe*, and that the said *Roger* was summoned by *John Den* and *Richard Fen*, and upon this the said *William Wilton*, by declaring against the said *Roger* upon the Writ aforesaid, then demanded against him the Tenements, Rent and Commons aforesaid, with the Appurtenances, as his Right and Inheritance, and into which the said *Robert* had not Entry, but after the Disseisin which *Hugh Hunt* thereof unjustly and without Judgment made to the said *William* within thirty Years, &c. and whereupon he then said that he himself was seized of the Tenement, Rent and Commons aforesaid, with the Appurtenances, in his Demesne as of Fee and Right, in the Time of Peace in the Time of the said King and Queen, by taking the Profits thereof to the Value, &c. and into which, &c. and thereupon he then brought Suit, &c. and the aforesaid *Roger* in his proper Person then defended his Right when, &c. and vouched thereof to Warranty the aforesaid *George Ramsden*, summoned in the County aforesaid, so that the then Sheriff should have him here on the Morrow of the Ascension of our Lord then next following, by the Aid of the Court, &c. The same Day was given to the Parties aforesaid there, &c. and thereupon the said *Roger* put in his Stead *John Empson* and *Joseph Butler* his Attornies, jointly and severally against the aforesaid *William*, to gain or lose of the Plea aforesaid, &c. at which Day here came as well the aforesaid *William Wilton* in his proper Person, as the aforesaid *Roger* by the said *John Empson* his Attorney, and the aforesaid *George* being summoned, &c. by *Thomas Gill* his Attorney likewise came and freely warranted to him the Tenements, Rent and Commons aforesaid, with the Appurtenances, &c. and thereupon the aforesaid *William* demanded against him the said *George*, Tenant by his Warranty, the Tenements, Rent and Commons aforesaid, with the Appurtenances aforesaid, in Form aforesaid, &c. and whereupon he then said that he himself was seized of the Tenements, Rent and Commons aforesaid, with the Appurtenances, in his Demesne as of Fee and of Right, in Time of Peace in the Time of the said King and Queen, by taking the Profits thereof to the Value, &c. and into which, &c. and thereupon he then brought Suit, &c. and the aforesaid *George*, Tenant by his Warranty, then defended his Right when, &c. and further vouched thereof to War-

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ranty *John Wheeler*, who was then likewise present in Court here in his proper Person, and freely warranted to him the Tenements, Rent and Commons aforesaid, with the Appurtenances, &c. and upon this the aforesaid *William* demanded against him the aforesaid *John*, Tenant by his Warranty, the Tenements, Rent and Commons aforesaid, with the Appurtenances, in Form aforesaid, &c. And whereupon the said *William* then said that he himself was seised of the Tenements, Rent and Commons aforesaid, with the Appurtenances, in his Demesne as of Fee and Right in Time of Peace in the Time of the said King and Queen, by taking the Profits thereof to the Value, &c. and into which, &c. and thereupon he then brought Suit, &c. and the aforesaid *John Wheeler*, Tenant by his Warranty, defended his Right when, &c. and then said that the aforesaid *Hugh* did not disseise the said *William* of the Tenements, Rent and Commons aforesaid, with the Appurtenances, as the said *William* by his Writ and Declaration aforesaid above supposed; and of this he then put himself upon the Country, and the aforesaid *William* then prayed leave thereof to imparl, and he had it, &c. and afterwards the said *William* came again in the same Court in that same Term in his proper Person, and the aforesaid *John*, although solemnly called came not again, but departed in Contempt of the Court, and made Default; therefore it was considered that the aforesaid *William* should recover his Seisin against the said *Roger* of the Tenements, with the Rent and Commons aforesaid, with the Appurtenances, and that the said *Roger* should have of the Land of the said *George* to the Value, &c. and that the said *George* should further have of the Land of the said *John* to the Value, &c. and the said *John Wheeler* should be in Mercy, &c. And thereupon the said *William* prayed the Writ of the said King and Queen, to be directed to the Sheriff of the County of *York* aforesaid, to cause full Seisin to be delivered to him of the Tenements, Rent and Commons aforesaid, with the Appurtenances; and it was granted to him returnable in the same Court here in eight Days of the Holy *Trinity* then next following, at which Day came in the same Court here the aforesaid *William* in his proper Person, and the Sheriff, to wit, *Christopher Wandesford*, Bart. then returned that he by Virtue of the Writ aforesaid, on the ninth Day of *June* then last past had caused to be delivered to the said *William* full Seisin of the Tenements, Rent and Commons aforesaid, with the Appurtenances, as by that Writ he was commanded, as
by

by the Exemplification of that Record to the said Jurors in Evidence shewn more fully appeareth; and by reason of the Premisses he the said *George Ramsden* was seised of the Tenements within specified, with the Appurtenances, as the Law requireth; and being so seised thereof, the aforesaid *Abraham Langley* lent and paid to the aforesaid *George Ramsden* the Sum of 150*l.* specified in the Indenture of Release afterwards mentioned, and thereupon afterwards, to wit, on the first Day of *November* in the ninth Year of the Reign of the Lord the now King, by a certain Indenture then made between him the said *George Ramsden*, by the Name of *George Ramsden* of *Heath* in *Skircoate* in the County of *York*, Yeoman, of the one Part, and the within named *Abraham Langley*, by the Name of *Abraham Langley*, of *Preissley* in *Hipperbolme* in the County aforesaid, Gent. of the other Part, to the said Jurors also in Evidence shewn, for and in Consideration of five Shillings to the said *George Ramsden* by the said *Abraham* in Hand paid, the said *George Ramsden* bargained and sold the Tenements within written, with the Appurtenances, to the said *Abraham*; To have and to hold from the Day next before the Day of the Date of the same Indenture, for and during and unto the full End and Term of one whole Year from thence next following and fully to be compleat and ended: By Virtue of which said Bargain and Sale, and also by Force of the Statute aforesaid, the said *Abraham* was possessed of the Tenements aforesaid with the Appurtenances, as the Law requireth; and being thereof so possessed, and the aforesaid *George* being seised of the Reversion thereof, as the Law requireth, afterwards, to wit, on the second Day of *November* in the ninth Year aforesaid, by a certain other Indenture then made between him the said *George Ramsden* of *Heath* in *Skircoate* in the County of *York*, Yeoman, of the one Part, and the said *Abraham*, by the Name of *Abraham Langley* of *Preissley* in *Hipperbolme* in the County aforesaid, Gent. of the other Part, to the said Jurors in Evidence shewn, the said *George Ramsden* for and in Consideration of the Sum of 150*l.* of lawful Money of *England* to the said *George Ramsden* by the said *Abraham*, before the Sealing and Delivery of the same Indenture, well and truly in Hand paid, the said *George* granted and released to the said *Abraham* the Tenements within written, with the Appurtenances, to the said *Abraham Langley*; To have and to hold those Tenements with the Appurtenances, to the said *Abraham Langley*, his Heirs and Assigns, to the only Use and Behoof of the said *Abraham*

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Abraham Langley, his Heirs and Assigns for ever: And by reason of the Premises the said *Abraham* entered into those Tenements with the Appurtenances, and was seised thereof, as the Law requireth; and being so seised thereof, the said *George* afterwards, to wit, the first Day of *December* in the Year of our Lord 1697 died: And the said Jurors further say upon their Oath, that the within named *John Ramsden* the Younger afterwards, to wit, on the within written first Day of *April* in the twelfth Year of the Reign of the Lord the now King, demised, granted and to Farm lett to the said *Humfrey* the said Tenements with the Appurtenances; To have and to hold those Tenements, with the Appurtenances, to the said *Humfrey* and his Assigns, from the first Day of *March* then last past until the full End and Term of five Years from thence next following fully to be compleat and ended, as within is supposed: By Virtue of which said Demise he the said *Humfrey* entered into the Tenements aforesaid, with the Appurtenances, and was possessed thereof, until the aforesaid *Abraham* afterwards, to wit, the same first Day of *April* in the twelfth Year aforesaid into the Tenements aforesaid with the Appurtenances, in and upon the Possession of him the said *Humfrey* thereupon entred, and him the said *Humfrey* from his Farm aforesaid ejected, expelled and removed, as within is alledged: But whether upon the whole Matter aforesaid in Form aforesaid found the said *Abraham* be guilty of the Trespass and Ejectment within written, or not, the Jurors are wholly ignorant, and thereupon pray the Advice of the Court here in the Premises: And if upon the whole Matter aforesaid in Form aforesaid found it shall seem to the Justices here that the said *Abraham* is guilty of the Trespass and Ejectment aforesaid, then they the said Jurors say upon their Oath, that the said *Abraham* is guilty of the Trespass and Ejectment aforesaid, as the said *Humfrey* within complains against him; and then they assess the Damages of him the said *Humfrey*, by occasion of that Trespass and Ejectment, besides his Costs and Charges by him about his Suit in this Behalf laid out, to two Pence, and for those Costs and Charges to forty Shillings: And if upon the whole Matter aforesaid in Form aforesaid found it shall seem to the Justices here that the said *Abraham* is not guilty of the Trespass and Ejectment aforesaid, then they the said Jurors say upon their Oath that the aforesaid *Abraham* is not guilty of the Trespass and Ejectment aforesaid, as the said *Abraham* within in Pleading hath alledged, &c.

Pleas

Pleas before the Lady the Queen at Westminster of the Term of Saint Hilary in the first Year of the Reign of Ann, now Queen of England, &c. Roll 435.

Coggs against Barnard. 2 Ld. Raym. 909.

Middlesex, (to wit) **B**E it remembered, that hereto- *Assumpsit to*
fore, to wit, in the Term of Saint take up Casks
Michael last past before the Lady the Queen at *Westmin-* of Brandy in
ster came *John Coggs* by *Joseph Sherwood* his Attorney, and one Cellar and
brought into the Court of the said Lady the Queen then lay them
there his certain Bill against *William Barnard*, in Custody down in ano-
of the Marshal, &c. of a Plea of Trespass upon the Case; ther.
and there are Pledges of prosecuting, to wit, *John Doe* and
Richard Roe; which said Bill follows in these Words, (to
wit) *John Coggs* complains of *William Barnard*, in Custody
of the Marshal of the *Marshalsea* of the Lady the Queen,
being before the Queen herself, for that, (to wit) That First Count.
whereas the said *William* on the tenth Day of *November*
in the thirteenth Year of the Reign of the Lord *William*
the Third, now King of *England*, &c. at the Parish of
Saint Clement Danes in the County of *Middlesex* aforesaid,
undertook to take up safely and securely divers Casks of
Brandy of him the said *John*, then being in a certain Cel-
lar, situate in a certain Place called *Brooks-market* in the
Parish of *Saint Andrew Holbourn* in the County aforesaid,
and undertook upon himself to lay the same down safely
and securely in a certain other Cellar, situate in a certain
other Place called *Water-street* in the Parish of *Saint Cle-*
ment Danes in the County aforesaid: He the said *William*, Breach.
his Servants and Agents, afterwards to wit, the same Day
and Year, at the Parish of *Saint Clement Danes* aforesaid,
so negligently and improvidently managed the said Casks
of Brandy in laying them down in the Cellar last mention-
ed, that for want of the good Care of the said *William*,
his Servants and Agents, one of the same Casks of Bran-
dy was then and there staved, and a great Quantity, to wit,
150 Gallons of Brandy in the said Cask by that Means Second Count.
was spilled upon the Ground and lost. And also whereas
the said *William* afterwards, to wit, on the same tenth Day
of *November* in the 13th Year aforesaid, at the Parish of
Saint Clement Danes aforesaid in the County of *Middlesex*
aforesaid, undertook to take up safely and securely divers
other Casks of Brandy of him the said *John*, being then
in a certain other Cellar, situate in a certain Place called
Brooks-

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Breach,

Brooks-market in the Parish of Saint *Andrew Holbourn* in the County aforesaid, and to put those Casks there upon a Cart to be carried to a certain other Cellar, situate in a certain other Place called *Water-street* in the Parish of Saint *Clement Danes* in the County aforesaid, and the same Casks, to the Cellar last aforesaid, situate in *Water-street* last aforesaid, so being carried as aforesaid, there safely and securely to let down out of the Cart aforesaid, and lay down in the Cellar last aforesaid, he the said *William*, his Servants and Agents afterwards, to wit, the same Day and Year abovesaid, at the Parish of Saint *Clement Danes* aforesaid, the Casks of Brandy last aforesaid so negligently and improvidently managed in laying them down in the Cellar last mentioned, that for want of the good Care of the said *William*, his Servants and Agents, one of the same Casks of Brandy last mentioned was then and there staved, and a great Quantity, to wit, 150 Gallons of the Brandy last aforesaid, being in the same Cask last mentioned, was by that Means then and there spilled upon the Ground and lost; whereupon the said *John* saith that he is injured, and hath Damage to the Value of 100 l. And thereupon he brings Suit, &c.

Imparlance,

Not guilty
pleaded.*Nisi prius.*

And now at this Day, to wit, *Saturday* next after eight Days of Saint *Hilary* in this same Term, until which Day the said *William Barnard* had leave to imparl to the Bill aforesaid, and then to answer &c. before the Lady the Queen at *Westminster* come as well the said *John Coggs* by his Attorney aforesaid, as the said *William Barnard* by *William Collier* his Attorney; and the said *William Barnard* defends the Force and Injury when, &c. and saith that he is not guilty thereof; and of this he puts himself upon the Country, and the said *John Coggs* likewise, &c. Therefore let a Jury come before the Lady the Queen at *Westminster* on *Monday* next after the Morrow of the Purification of the Blessed Virgin *Mary*; and who neither, &c. to take Cognizance, &c. because as well, &c. The same Day is given to the Parties aforesaid there, &c. Afterwards the Process thereupon is continued between the Parties, of the Plea aforesaid, by the Jury being respited thereupon between them, before the Lady the Queen at *Westminster* until *Thursday* next after eight Days of the Purification of the Blessed Virgin *Mary* from thence next following; unless the Lady the Queen's right trusty and well-beloved Sir *John Holt*, Knt. Chief Justice of the Lady the Queen, assigned to hold Pleas in the Court of her the said Lady

Lady the Queen, before the Queen herself, before, on *Wednesday* next after eight Days of the Purification of the Blessed Virgin Mary, at *Westminster* aforesaid in the County of *Middlesex* aforesaid, in the Great Hall of Pleas there, by Form of the Statute, &c. shall come, for want of Jurors, &c. At which Day before the Lady the Queen at *Westminster* cometh the said *John Coggs* by his Attorney aforesaid: And the said Chief Justice of the Lady the Queen before whom, &c. hath sent his Record before him had in these Words: Afterwards on the Day and at the Place *Fossea*. within contained, before Sir *John Holt*, Knt. the Chief Justice within written, *John Ince*, Gent. being associated to him by Form of the Statute, &c. come as well the within named *John Coggs* as the within named *William Barnard* by their Attornies within contained: And the Jurors of the Jury being called likewise come, who being chosen, tried and sworn to speak the Truth concerning the Matters within contained, say upon their Oath, that the said Verdict for *Willam Barnard* is guilty of the Premisses within laid to his the Plaintiff. Charge, in Manner and Form as the said *John Coggs* within complains against him; and they assess the Damages of him the said *John Coggs*, by reason thereof, besides his Costs and Charges by him laid out about his Suit in this Behalf, to 10 *l.* and for those Costs and Charges to 20 *s.* There- Final Judg-
fore it is considered that the said *John Coggs* do recover a- ment.
gainst the said *William Barnard* his Damages aforesaid, by the said Jury in Form aforesaid assessed, and also 21 *l.* for his Costs and Charges aforesaid to the said *John Coggs*, by the Court of the said Lady the Queen now here with his Consent of Increase adjudged; which said Damages in the Whole amount to 32 *l.* and the said *William Barnard* in Mercy, &c.

Pleas

Pleas at Westminster before George Treby, Knt. and his Companions, Justices of the Lord the King and Lady the Queen of the Bench, of the Term of the Holy Trinity in the sixth Year of the Reign of the Lord William and Lady Mary, by the Grace of God, of England, Scotland, France and Ireland King and Queen, Defenders of the Faith, &c. Roll 364.

Knight and his Wife against the Mayor, &c. of Wells.
1 *Ld. Raym.* 30.

Declaration in
Debt upon a
Bond to the
Plaintiff's
Wife while
Sole against
the Corporation
of *Wells*.

Heretofore, as it appeareth in the Term of Saint Hilary last past in the 1098th Roll it is thus contained: *Somersetshire*, (to wit) The Mayor, Masters and Burgeses of the City or Borough of *Wells*, otherwise called the Mayor, Aldermen and Burgeses of the City or Borough of *Wells* in the County of *Somerset*, in Mercy, for many Defaults, &c. they the said Mayor, Masters and Burgeses were summoned to answer *Joseph Knight*, Esq; and *Philippa* his Wife, lately called *Philippa Gore*, of a Plea that they render to them 200 *l.* which they owe to them and unjustly detain, &c. And whereupon the said *Joseph* and *Philippa*, by *Joseph Tate* their Attorney say, that whereas the said Mayor, Masters and Burgeses, by the Name of Mayor, Aldermen and Burgeses of the City or Borough of *Wells* in the County of *Somerset*, on the 12th Day of July, in the second Year of the Reign of *James* the Second, late King of *England*, &c. at the City of *Wells* in the County of *Somerset*, by their certain Writing obligatory, sealed with their common Seal, which they the said *Joseph Knight* and *Philippa* bring here into Court, the Date whereof is the same Day and Year, granted themselves to be bound to the said *Philippa* while she was sole, by the Name of Mrs. *Philippa Gore* of *Barrow* in the County aforesaid, Widow, in the aforesaid 200 *l.* to be paid to the said *Philippa*, when they should be thereunto requested: Nevertheless the aforesaid Mayor, Masters and Burgeses of the City or Borough of *Wells* aforesaid, although often requested, have not rendered the said 200 *l.* to the said *Philippa* while she was Sole, or to them the said *Joseph Knight* and *Philippa* after the Espousals were celebrated between them, but have denied, and yet do deny to render the same to them; whereupon they say that they are injured, and have sustained Damage to the Value of 40 *l.* and thereupon they bring Suit, &c.

And

And the aforesaid Mayor, Masters and Burgesses, by Imparlance.

John Davies their Attorney, come and defend the Force and Injury when, &c. and thereupon pray leave to imparl here until from *Easter Day* in fifteen Days; and they have it, &c. The same Day is given to the aforesaid *Joseph Knight* and *Philippa* here, &c. At which Day here come as well the said *Joseph Knight* and *Philippa*, as the aforesaid Mayor, Masters and Burgesses, by their Attornies aforesaid: And the aforesaid Mayor, Masters and Burgesses, pray further leave to imparl thereupon here until on the Morrow of the Holy *Trinity*; and they have it, &c. The same Day is given to the aforesaid *Joseph Knight* and *Philippa* here, &c. And now here at this Day, that is to say, on the Morrow of the Holy *Trinity* aforesaid come as well the aforesaid Mayor, Masters and Burgesses, as the aforesaid *Joseph Knight* and *Philippa* by their Attornies aforesaid: And hereupon they the said *Joseph Knight* and *Philippa* pray that the aforesaid Mayor, Masters and Burgesses may answer to their said Declaration; and they the said Mayor, Masters and Burgesses, as before, defend the Force and Injury when, &c. and say that they ought not to be charged with the Debt aforesaid, by Virtue of the said Writing obligatory, because they say, that that Writing is not the Deed of them the said Mayor, Masters and Burgesses; and of this they put themselves upon the Country, and the aforesaid *Joseph Knight* and *Philippa* likewise: Therefore the Sheriff is commanded that he cause to come here from the Day of the Holy *Trinity* in three Weeks twelve, &c. by whom, &c. and who neither, &c. to take Cognizance, &c. because as well, &c. At which Day the Jury between the Parties aforesaid of the Plea aforesaid was thereupon respited between them here until this Day, that is to say, from the Day of Saint *Michael* in three Weeks then next following, unless the Justices of the Lord the King and Lady the Queen, assigned to take the Assizes in the County aforesaid, by Form of the Statute, &c. on *Wednesday* the 15th Day of *August* next, past, at the City of *Wells* in the County aforesaid, should before come: And now here at this Day come as well the said *Joseph Knight* and *Philippa* as the aforesaid Mayor, Masters and Burgesses of the City or Borough of *Wells* aforesaid, by their Attornies aforesaid. And the aforesaid Justices of Assize before whom, &c. have sent here their Record in these Words: Afterwards on the Day and at the Place within contained, before *John Powell*, Knt. one of the Justices of the Lord the King and Lady the Queen

Plea Non est factum issue to the Country.

Postea.

of

PLEADINGS TO THE CASES.

of the Bench, and *Thomas Rokeby*, another Justice of the said Lord the King and Lady the Queen of the Bench, Justices of the said Lord the King and Lady the Queen, assigned to take the Assizes in the County of *Somerset*, by Form of the Statute, &c. come as well the within named *Joseph Knight*, Esq; and *Philippa* his Wife, lately called *Philippa Gore*, as the within written Mayor, Masters and Burgesses of the City or Borough of *Wells*, otherwise called the Mayor, Aldermen and Burgesses of the City or Borough of *Wells* in the County of *Somerset*, by their Attorneys within contained; and the Jurors of the Jury, whereof Mention is within made, being called, some of them, that is to say, *Thomas Samborne*, *James Tucker* and *Joseph Horle* came, and are sworn upon that Jury: And because the Rest of the Jurors of the same Jury did not appear, therefore others of the By-standers, by the Sheriff of the County aforesaid chosen for this Purpose, at the Request of the said *Joseph Knight* and *Philippa* his Wife, and by the Command of the Justices aforesaid are newly appointed, whose Names are affixed in the Panel within written, according to the Form of the Statute in such Case lately made and provided; and the Jurors so newly appointed, to wit, *John Webber*, *John Spireing*, *Giles Ford*, *William Bagg*, *Edward Austice*, *Hugh Brome*, *William Horler*, *John Butcher* and *John Cording*, being called likewise came, who being chosen, tried and sworn to speak the Truth concerning the Matters within contained, together with the said other Jurors before impanelled and sworn for this Purpose, say upon their Oath, that long before the Time of making the Writing obligatory within written, Lady *Elizabeth*, late Queen of *England*, &c. by her Letters Patent under her Great Seal of *England*, bearing Date the 19th Day of *July* in the 31st Year of her Reign, reciting, that whereas the City or Borough of *Wells* in the County of *Somerset* was an antient and populous Town, therefore she the said Queen willing that for the future for ever there should be had in the said City or Borough continually one certain and undoubted Method of, and for the Keeping the Peace and Rule and Government of the People there, and that the City or Borough aforesaid for the future and for ever might be, and remain a City or Borough of Peace and Quietness, to the Dread and Terror of evil Persons, and for the Reward of the Good, and that Peace and other Deeds of Justice there without Delay should be kept; and hoping that the Burgesses of that City

Tales.

Special Verdict.
Finds the
Charter of
Incorporation
of Queen
Elizabeth.

City or Borough for the Favour and Grace of the same Queen, to them in her said Letters Patent granted and declared, would think themselves more strongly bound to perform and fulfil their Duty and Services to the said Queen, and her Heirs and Successors, of her especial Grace, and of her certain Knowledge and her own meer Motion, willed, ordained, constituted, declared and granted, and by the same Letters Patent for her Heirs and Successors willed, ordained, constituted, declared and granted, that the said City or Borough of *Wells* in the said County of *Somerset* was, and should be a free City or Borough of itself, and that the Burgesses of that City or Borough, and their Successors for the future for ever, were and should be one Body Corporate and Politic in Thing, Fact and Name, by the Name of the Mayor, Masters and Burgesses of the City or Borough of *Wells* in the County of *Somerset*, and known by the Name of the Mayor, Masters and Burgesses of the City or Borough of *Wells* in the County of *Somerset*, one Body Corporate and Politic in Thing, Fact and Name really, and to the full, for herself the said Queen, her Heirs and Successors, erected, made, ordained, constituted and declared by her said Letters Patent, and that by the same Name they should have perpetual Succession: and that they by the Name of the Mayor, Masters and Burgesses of the City or Borough of *Wells*, were and should be in all future Times for ever, able Persons and capable by Law to have, purchase, receive and possess Lands, Tenements, Liberties, Privileges, Jurisdictions, Franchises and Hereditaments, of whatsoever Kind, Nature or Species they might be, to themselves and their Successors, in Fee and Perpetuity, also Goods and Chattels, and all other Things whatsoever of whatsoever Kind, Nature or Species they might be; and also to give, grant, demise and assign Lands, Tenements and Hereditaments, and to do and execute all and every other Deeds and Things by the Name aforesaid: And that by the same Name of the Mayor, Masters and Burgesses of the City or Borough of *Wells* in the County of *Somerset* aforesaid, they might and be able to plead and be impleaded, to answer and be answered, to defend and be defended in all Courts and Places whatsoever, and before all Judges, Justices, and other Persons and Officers whatsoever of the said late Queen, and her Heirs and Successors, in all Suits, Complaints, Causes, Matters and Demands whatsoever, of whatsoever Kind, Nature or Species they might be, in the same Manner and Form as other Free Persons of the said late Queen of this Realm of
England,

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England, were and might be able and capable in Law to plead and be impleaded, answer and be answered, defend and be defended, and to have, purchase, receive, possess, give, grant and demise : And that said Mayor, Masters and Burgesses of the City or Borough aforesaid, and their Successors, should have for ever a common Seal, to be kept for all their Causes and Businesses whatsoever to be done of them and their Successors ; and that it should and might be well and lawful for the said Mayor, Masters and Burgesses, and their Successors, that Seal, at their Will and Pleasure, from Time to Time to break, change and make of new, as should seem to them better to be done. And further the said late Queen willed, and by her same Letters Patent for herself, her Heirs and Successors, ordained, that for ever then for the future there should and might be in the City or Borough aforesaid one Mayor, and twenty-three of the more discreet and honest Burgesses of the City or Borough aforesaid, who should be called the Common Council of the City or Borough aforesaid, and should be aiding and assisting to the Mayor of the said City or Borough of *Wells* for the Time being, in all Causes and Matters concerning the City or Borough aforesaid. And further the said late Queen willed, and by her same Letters Patent for herself, her Heirs and Successors, granted to the said Mayor, Masters and Burgesses of the City or Borough aforesaid, and their Successors, that by the Mayor of the City or Borough aforesaid, (for the Time being) and the Masters and Burgesses, being the Common Council of that City or Borough, or by the major Part of them, the said Mayor, Masters and Burgesses (of whom the said late Queen willed that the Mayor of the said City or Borough for the Time being, and two Masters of the City or Borough aforesaid, should be three) should have the full Power and Faculty of instituting, constituting, ordaining and making from Time to Time all reasonable Statutes and Ordinances whatsoever for the good Rule and Government of the Burgesses and Inhabitants of the City or Borough aforesaid for the Time being, and for declaring in what Manner and Order the Mayor, Masters and Burgesses, Artificers, Inhabitants and Residents of that City or Borough should themselves have, bear and use in their Offices, Mysteries, Trades and Businesses within the Borough aforesaid, and the Limits thereof, for the Time being, and otherwise for the further good and public Utility and Government of that City or Borough, and for the Visiting of the said City or Borough, and also for the better Preservation, Government

vernment, Disposition, Placing out and Demising of the Lands, Tenements, Possessions, Revenues and Hereditaments of the said Mayor, Masters and Burgesſes, and their Successors, Feoffees, Grantees or Assignees, or their future Feoffees, Grantees or Assignees, and all other Affairs and Causes whatsoever touching or in any Manner concerning the City or Borough aforesaid, or the Statutes, Rights and Interest of the same City or Borough, which to them should seem good, wholesome, profitable, honest and necessary, according to their sound Discretion, not being in any Thing prejudicial to the Bishop of *Bath and Wells*, and his Successors for the Time being, or to his Liberties, nor to the Dean and Chapter of the Cathedral Church of *Wells* and their Successors, or against the Laws and Customs of this Realm of *England*: And that they and their Successors, by the Mayor for the Time being, and the Masters and Burgesſes, being the Common Council of the said City or Borough, or the major Part of them as aforesaid, as often as they should make such Statutes and Ordinances, should constitute, ordain and establish in Form aforesaid such reasonable Pains, Punishments, Penalties and Imprisonment of Body, or by Fine and Amercement, or by either of them, to and upon all Delinquents against such Laws, Statutes and Ordinances, or any of them, or any such, and which to the same Mayor, Masters and Burgesſes, the Common Council of the City or Borough aforesaid for the Time being, or to the major Part of them as aforesaid, should seem to be good, necessary and requisite, and should and might be able to have and levy the same Fines and Amercements without the Hindrance of the said late Queen, her Heirs and Successors; all and singular which Laws, Statutes and Ordinances so to be made as aforesaid, the said late Queen willed to be observed, under the Pains in the same to be contained; nevertheless so that such Laws, Statutes and Ordinances should not be repugnant nor contrary to the Laws or Statutes of this Realm of *England*, nor in any Manner prejudicial to the Bishop of *Bath and Wells* and his Successors, nor to the Prejudice of the said Dean and Chapter of the Cathedral Church of *Wells* aforesaid: And furthermore the same late Queen willed, ordained, and for herself, her Heirs and Successors, granted to the aforesaid Mayor, Masters and Burgesſes, and to their Successors, that for ever for the then future there should and might be to the aforesaid City or Borough one Mayor and seven Masters in Number only of the Burgesſes of the City or Borough aforesaid, being of the Common Council of the

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same

PLEADINGS TO THE CASES.

The Charter
of Incorpora-
tion of King
Charles the
Second.

same City or Borough, to be chosen and appointed in the Form in the same Letters Patent therein after specified, as by the same Letters Patent, among other Things, more fully appears. And furthermore the said late Queen will- ed, and by her same Letters Patent, of her special Grace, and of her certain Knowledge and mere Motion, granted to the aforesaid Mayor, Masters and Burgesses of her City or Borough aforesaid, and to their Successors for ever, that from thence for the future there might and should be in the City or Borough aforesaid 16 others such of the better and more honest Burgesses of the City or Borough aforesaid, to be chosen by the same Mayor, Recorder and Masters, or the major Part of them, who together with the said Mayor and seven Masters of the City or Borough aforesaid, should fulfil the Number of twenty-four Capital Burgesses or Counsellors of the same City or Borough, and should be, and should be reputed and named the Capital Burgesses and Counsellors of the same City or Borough; which said twenty-four Capital Burgesses and Counsellors should make and be for ever, and be called in all future Times for ever, the Common Council of the City or Borough aforesaid, for all Things, Matters, Causes and Businesses touching or concerning the Borough aforesaid, and the good Rule, State and Government thereof; and that every one of the said twenty-four Capital Burgesses, not being in the Office of Mayor of the City or Borough aforesaid, should and were to be from Time to Time Assistants and aiding to the Mayor of the same City or Borough for the Time being, in all Causes and Matters touching or concerning the same City or Borough, as by the same Letters Patent, among other Things more fully appears. And they the said Jurors further upon their Oath say, That the Lord *Charles* the Second, late King of *England*, &c. by his Letters Patent under his Great Seal of *England*, bearing Date the 10th Day of *January* in the 35th Year of his Reign, affecting the Improvement of his City or Borough of *Wells* in his County of *Somerset*, and then willing that for the future for ever in the same City or Borough there should be had in the said City or Borough continually one certain and undoubted Method for the Keeping the Peace, and good Rule and Government of the People there, that the City or Borough aforesaid for the future for ever might be and remain a City or Borough of Peace and Quietness, for the Reward of the Good and the Terror of Evil Persons; and that the Peace of the said late King, and other Deeds of Justice there, without fur-

ther Delay should be kept : And hoping that if the Mayor, Aldermen and Burgesses of the City or Borough of *Wells* aforesaid; and their Successors, might have and enjoy more ample Liberties, Profits and Privileges of the Grant of the said late King, then they would think themselves more especially and strongly bound to weigh and perform, the Services of the said late King, his Heirs and Successors, of his especial Grace, and of his certain Knowledge and mere Motion, and upon the humble Petition of the then Mayor, Masters and Burgesses of the City or Borough of *Wells* aforesaid, willed, constituted, declared, ordained and granted, and by his same Letters Patent for himself, his Heirs and Successors, hath willed, constituted, declared, ordained and granted that the said City or Borough of *Wells* in the said County of *Somerset* was and should for the future remain a free City or Borough of itself, and that the Burgesses of the City or Borough aforesaid, by whatsoever Name, or by whatsoever Names they or their Predecessors before that Time were incorporated, they were and should be for the future for ever, by Force of the same Letters Patent, one Body Corporate and Politic in Thing, Fact and Name, by the Name of The Mayor, Aldermen and Burgesses of the City or Borough of *Wells* in the County of *Somerset*, and them and their Successors, by the Name of the Mayor, Aldermen and Burgesses of the City or Borough of *Wells* in the County of *Somerset*, one Body Corporate and Politic in Thing, Fact and Name really and to the full, for himself the said late King, his Heirs and Successors, erected, made, ordained, constituted, declared and created by his same Letters Patent ; and that by the same Name they should have perpetual Succession, and that they and their Successors, by the Name of The Mayor, Aldermen and Burgesses of the City or Borough of *Wells*, were and should be in all future Times for ever, able Persons and capable in Law to have and purchase, receive and possess Lands, Tenements, Liberties, Privileges, Franchises, Jurisdictions and Hereditaments to them and their Successors, in Fee and Perpetuity, or for Term of Life or Lives, or in any other Manner whatsoever, and also Goods and Chattels, and all other Things of whatsoever Kind, Nature, Species or Quality they might be ; and also to give, grant, demise and assign the same Lands, Tenements, Hereditaments, Goods and Chattels, and to do and execute all other Deeds and Things by the Name aforesaid : And that by the Name of the Mayor, Aldermen and Burgesses

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of the City or Borough of *Wells* aforesaid in the County of *Somerſet*, they might and be able to plead and be impleaded, to answer and be answered, to defend and be defended in all Courts and Places whatsoever, and before all Judges and Juſtices, and other Perſons and Officers whatsoever of the ſaid Lord the King, his Heirs and Succeſſors, in all and ſingular Actions, Pleas, Suits, Plaints, Cauſes, Matters and Demands whatsoever, of whatsoever Kind, Nature or Species they might be, in the ſame Manner and Form as any other Liege Perſons of the ſaid late King of this Realm of *England*, or any other Body Corporate and Politic within this Realm of *England*, might and were able to have or purchaſe, receive, poſſeſs, give, grant and demise, and to plead and be impleaded, answer and be answered, defend and be defended: And that the ſaid Mayor, Aldermen and Burgeſſes of the City or Borough of *Wells* aforesaid, and their Succeſſors, ſhould have for ever a common Seal, to be kept for all their Cauſes and Buſineſſes whatsoever to be done of them and their Succeſſors; and that it ſhould and might be well lawful for the ſaid Mayor, Aldermen and Burgeſſes of the City or Borough aforesaid, and their Succeſſors, that ſeal, at their Will and Pleaſure, from Time to Time to break, change and make of new, as it ſhould ſeem to them to be better to be done. And further the ſaid late King willed, and by his ſame Letters Patent for himſelf, his Heirs and Succeſſors, granted to the aforesaid Mayor, Aldermen and Burgeſſes of the City or Borough aforesaid, and their Succeſſors, that then for the future for ever there ſhould and might be in the City or Borough aforesaid one Mayor, and twenty-three of the more diſcreet and honeſt Burgeſſes of the City or Borough aforesaid, who ſhould be called the Common Council of the City or Borough aforesaid, and ſhould be aiding and aſſiſting to the Mayor of the ſaid City or Borough of *Wells* aforesaid for the Time being, in all Cauſes and Matters concerning the City or Borough aforesaid. And further the ſaid late King willed, and by his ſame Letters Patent for himſelf, his Heirs and Succeſſors, granted to the ſaid Mayor, Aldermen and Burgeſſes of the City or Borough of *Wells* aforesaid, and their Succeſſors, that they and their Succeſſors, by the Mayor of the City or Borough aforesaid, (for the Time being) and the Aldermen and Burgeſſes, being the Common Council of that City or Borough, or by the major Part of them, the ſaid Mayor, Aldermen and Burgeſſes (of whom the ſaid late King willed that the Mayor of the ſame City or Borough for the Time being

being, and two Aldermen of the City or Borough aforesaid, should be three) should have the full Power and Authority of instituting, constituting, ordaining and making from Time to Time all reasonable Statutes and Ordinances whatsoever for the good Rule and Government of the Burgeses and Inhabitants of the City or Borough aforesaid for the Time being, and for declaring in what Manner and Order the said Mayor, Aldermen and Burgeses of the City or Borough aforesaid, and the Artificers, Inhabitants and Resiants of that City or Borough should themselves have, bear and use in their Offices, Misteries, Trades and Businesses within that City or Borough, and the Limits thereof for the Time being, and further for the more further Good and public Utility and Government of that City or Borough, and for the Victualling of the same City or Borough, and also for the better Preservation, Government, Disposition, Placing out and Demising of the Lands, Tenements, Possessions and Hereditaments of the said Mayor, Aldermen and Burgeses, and their Successors, Feoffees, Grantees or Assignees, or their future Feoffees, Grantees or Assignees, and all other Affairs and Causes whatsoever touching or in any Manner concerning the City or Borough aforesaid, or the Statutes, Rights and Interest of the same City or Borough, which to them should seem to be good, wholesome, profitable, honest and necessary, according to their sound Discretion, not being in any Thing prejudicial to the Bishop of *Bath and Wells* and his Successors for the Time being, or to his Liberties, nor to the Dean and Chapter of the Cathedral Church of *Wells* or their Successors, or against the Laws and Customs of this Realm of *England*: And that they and their Successors, by the Mayor for the Time being, and the Aldermen and Burgeses, being the Common Council of the said City or Borough, or the major Part of them as aforesaid, as often as they should make such Laws, Statutes and Ordinances, should constitute, ordain and establish in Form aforesaid such Pains, Punishments, Penalties and Imprisonment of body, or by Fine and Amercement, or by either of them, and upon all Delinquents against such Laws, Statutes and Ordinances, or any of them, or any such, and which to the same Mayor, Aldermen and Burgeses, being the Common Council of the City or Borough aforesaid for the Time being, or to the major Part of them as aforesaid, should seem to be good, necessary and requisite, and should and might be able to have and levy the same Fines and Amercements without the Hindrance of the said late King,

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his Heirs and Successors; all and singular which Laws, Statutes and Ordinances so to be made as aforesaid, the said late King willed to be observed, under the Pains in the same to be contained; nevertheless so that such Laws, Statutes and ordinances should not be repugnant nor contrary to the Laws or Statutes of this Realm of *England*, nor in any Manner prejudicial to the Bishop of *Bath and Wells* and his Successors, nor to the Prejudice of the said Dean and Chapter of the Cathedral Church of *Wells* aforesaid: And furthermore the same late King willed, and by his same Letters Patent for himself, his Heirs and Successors, granted to the aforesaid Mayor, Aldermen and Burgesses of the City or Borough of *Wells* aforesaid, and their Successors, that for ever for the then future there should and might be in the City or Borough aforesaid one of the more honest and discreet Men of that City or Borough, chosen from Time to Time in the Form in the same Letters Patent of the said late King therein after mentioned, who should be, and should be named the Mayor of that City or Borough, and that likewise there should and might be then for the future for ever within that City or Borough seven of the more honest and discreet Men of the same City or Borough, chosen from Time to Time, according to the Ordinances in the same Letters Patent of the same late King within specified, who should be, and should be named Aldermen of that City or Borough; and that likewise there should and might be for ever within the City or Borough aforesaid sixteen of the more honest and discreet Men of that City or Borough, named from Time to Time, in the Form in the same Letters Patent of the said late King therein mentioned, who should be, and should be named the Capital Burgesses of the City or Borough aforesaid, as by the same Letters Patent Under the Great Seal of the said late King *Charles* the Second (among other Things) more fully appears. And they the said Jurors further upon their Oath say, that after the making of the Letters Patent last mentioned, some Men being Members of the Old Corporation first above mentioned, by the Letters Patent aforesaid last mentioned, were made Members of the New Corporation last mentioned; and other Men who had not been Members of the Old Corporation aforesaid, were made Members of the New Corporation aforesaid: And that one *John Day* being named a Member of the New Corporation aforesaid by the said Letters Patent last mentioned, afterwards and before the making of the said Writing obligatory was chosen and made Mayor

Further finding of the Jury.

of the City or Borough aforesaid by Pretext of the Letters Patent last mentioned : And that the said *John Day* so as aforesaid being Mayor by Pretext of the Letters Patent last mentioned and 13 Members of the Corporation aforesaid, (the same 13 Members being the greater Number and Part of the Corporation aforesaid) caused the said common Seal of the Corporation of the City or Borough of *Wells* aforesaid in the County of *Somerset* aforesaid to be put to the Writing obligatory within mentioned on the Day and in the Year within written, the same *John Day* not being at any Time a Member of the Old Corporation : But whether upon the whole Matter aforesaid by the Jurors aforesaid in Form aforesaid found it shall seem to the Justices and Court here that the Writing obligatory within written be the Deed of the Mayor, Masters and Burgeses of the City or Borough of *Wells* within mentioned, or not, the Jurors aforesaid are wholly ignorant, and thereupon pray the Advice of the Justices and Court here, &c. and if upon the whole Matter aforesaid, by the Jurors aforesaid in Form aforesaid found, it shall seem to the Justices and Court here that the Writing obligatory within written be the Deed of the within named Mayor, Masters and Burgeses of the City or Borough of *Wells* within written, then the Jurors aforesaid say upon their Oath, that the Writing obligatory within written is the Deed of them the said Mayor, Masters and Burgeses of the City or Borough of *Wells* within mentioned, in Manner and Form as the within named *Joseph Knight* and *Philippa* have thereupon within declared against them ; and then the assess the Damages of them the said *Joseph* and *Philippa*, by reason of the detaining of the Debt within written besides their Costs and Charges by them laid out about their Suit in this Behalf, to two Pence, and for those Costs and Charges to forty Shillings : And if upon the whole Matter aforesaid, by the Jurors aforesaid in Form aforesaid found, it shall seem to the Justices and Court here that the Writing obligatory aforesaid be not the Deed of the within named Mayor, Masters and Burgeses of the City or Borough of *Wells* within mentioned, then the Jurors aforesaid further say upon their Oath, that the said Writing obligatory within written is not the Deed of them the said Mayor, Masters and Burgeses of the City or Borough of *Wells* within named, in Manner and Form as they the said Mayor, Masters and Burgeses of the City or Borough of *Wells*, have within thereupon in pleading alledged : And because the Justices here will advise themselves of and upon the Premises before they give Judgment thereon, Day is given to the Parties aforesaid here until

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from the Day of Saint *Michael* in three Weeks, for hearing their Judgment thereupon, for that they the said Justices here are not yet, &c. At which Day here come as well the said *Joseph* and *Philippa* as the said Mayor, Masters and Burgesles by their Attornies aforesaid: And because the Justices here will further advise themselves of and upon the Premisses before they give Judgment thereupon, Day is further given to the Parties aforesaid here until in eight Days of Saint *Hilary*, for hearing their Judgment thereupon, for that the said Justices are not, &c. (So enter the like Continuances (by *Curia advisare vult*) until the Term wherein Judgment is given, and then enter the Judgment as it shall happen to be,) which in this was for the Defendants.

Trinity Term in the third Year of the Reign of King William the Third. Roll. 684.

Bellasyse and Burbridge. 1 Ld. Raym. 170.

Action on the Stat. 2 W. &.

M. for rescuing a Distress for Rent.

Nottinghamshire, (to wit) **R**ICHARD Burbridge late of Mansfield in the County aforesaid, Mercer, Luke Martin late of Newark upon Trent in the County aforesaid, In-holder, Robert Wilde late of Newark upon Trent in the County aforesaid, Cordwainer, and Thomas Colgrave late of Winthrobe in the County aforesaid, Labourer, were attached to answer to Sir Rowland Bellasyse, Knight of the Bath, of a Plea of Trespas upon the Case, &c. And whereupon the said Rowland by Samuel Mottram his Attorney complains, that whereas on the 20th Day of March in the Year of our Lord 1692, at Holme in the County aforesaid, he demised, granted and to Farm let to one Edward Robinson one Messuage, two Crofts, one Close of Land called Sandhill Close, six Acres of Meadow, and one other Close called Barn Close, and six Cow-gates in the Upper Pasture, with the Appurtenances, situate, lying and being at Holme aforesaid, and Northmuskam and Batbley in the County aforesaid; To have and to hold the Tenements aforesaid, with the Appurtenances, to the said Edward Robinson, from the Feast of the Annunciation of the Blessed Virgin Mary then next following for one Year then next to come, and so from Year to Year, so long as both Parties should please; Yielding and paying therefore yearly and every Year wherein the said Edward should have and occupy the Tenements aforesaid, with the Appurtenances by Virtue of that Demise 12 l. and 11 s. at the Feasts of Saint Michael the Archangel, and the Annunciation of the Blessed Virgin Mary, by equal Portions: By

Virtue

Virtue of which said Demise the said *Edward* entred into the said demised Premisses with the Appurtenances, and was possessed thereof; and being so possessed thereof, and the said Demise being in full Force, he the said *Rowland* on the 20th Day of *December* in the Year of our Lord 1694, in and upon the said demised Premisses took and seised three Cows, one Steer, five Quarters of Barley and five Quarters of Wheat, in the Name of a Distress, for 18 l. 16 s. 6 d. of the Rent aforelaid, for one Year and an half of an Year, ended at the Feast of Saint *Michael* the Archangel then last past, being then due and in arrear, and the Grain aforelaid in the Name and Nature of a Distress for the said Rent so being due and in arrear detained in a Barn, Parcel of the said demised Premises, as impounded, by shutting and locking the Doors thereof with the same Grain therein, and that Grain so further to detain; and afterwards and after the Appraisement of the same, according to the Form of the Statute of the Parliament of the Lord the now King and Lady *Mary* late Queen of *England*, in such Case lately made and provided, would have sold it: Nevertheless the said *Richard*, *Luke*, *Robert* and *Thomas*, contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *Rowland* in this Behalf afterwards, to wit, on the 26th Day of *December* in the Year of our Lord 1694, at *Holme* aforelaid, and within the Time in which the Grain aforelaid remained in the said Barn under the said Distress so impounded, not sold nor replevied, with Force and Arms rescued, took and carried away the said Grain from the said Barn, against the Form of the Statute aforelaid, to the Damage of him the said *Rowland* of forty Pounds; and thereupon he brings Suit, &c.
The Defendants pleaded Not guilty.

Breedon against Gill. 1 Ld. Raym. 219.

England. **B**E it remembred, That on *Tuesday* on the Morrow of *All Souls* in this same Term before the Lord the King at *Westminster* cometh here in Court *Robert Breedon* in his proper Person, and gives the Court here to understand and be informed, That whereas by the Laws and Statutes of this Kingdom of *England*, every Issue joined in any Cause depending in any Court of the King within this Realm, before any Judge or Judges, ought to be tried and determined by the Testimony of *proa voce* Witnesses produced in such Court, and not by the

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the reading of Notes and Minutes in Writing, containing the Testimony of any Witness or Witnesses taken in the same or in any other Court, before the Time of the Trial of such Issue, by any Clerk of any Court : And whereas a certain Information lately, to wit, on the 18th Day of *January* in the 7th Year of the Reign of the said Lord the now King, according to the Form of the Statute in such Case made and provided, was exhibited at *London* in the Parish of _____ in the Ward of _____ before the Chief Commissioners and Governors of the Revenues of the said Lord the King of the Excise appointed, according to the Form of the Statute in such Case lately made and provided, by one *Thomas Gill*, Gent. who sued as well for the Lord the King as for himself and the Poor of the Parish of *Saint Martin in the Fields* in the County of *Middlesex*, against the said *Robert Breedon*, shewing that the said *Robert Breedon*, a common Brewer, inhabiting and keeping a common Brewhouse for brewing of Beer and Ale within the Limits and Jurisdiction of the General Office of the Excise, situate in *Broad-street, London*, that is to say, in the Parish of *Saint Martin in the Fields*, aforesaid, without first giving Notice thereof at the said Office of the Excise, or to the Commissioners or Governors aforesaid, or to any of them within the Limits and Jurisdiction thereof, in and about the 16th Day of *December* then last past did make use of and keep a private and concealed Storehouse or Room for laying Beer and Ale, or Worts in Casks, the same not being such as was openly known, discovered or made use of in his common usual Brewhouse, to the Damage and Prejudice of the said Lord the King in his Revenue of the Excise, which was contrary to the Form of the Statute in such Case made and provided, and therefore he prayed the Judgment of the said Commissioners and Governors by that Information, as in and by the Laws of the Excise was devised and appointed ; to which said Information before the said Commissioners and Governors the said *Robert Breedon* afterwards, to wit, on the third Day of *March* in the 8th Year of the Reign of the said Lord the now King there appeared and pleaded that he was not guilty of the Offence in the said Information contained, and Issue thereupon was there joined : And in such Manner it was thereupon proceeded before the said Commissioners and Governors of the Revenue of the said Lord the King of the Excise, that afterwards, to wit, on the said third Day of *March* in the 8th Year aforesaid, there the said Commissioners and Governors adjudged the said *Robert* to be guilty of the Premises objected to him by the Information aforesaid from which

which said Judgment and Determination, and for having Relief in the Premisses, the aforesaid *Robert Breedon* afterwards, to wit, on the 24th Day of *April* in the 8th Year of the Reign of the said Lord the now King according to the Form of the Statute in such Case lately made and provided, appealed to the Commissioners of the Appeals, by the Laws and Statutes of this Realm of *England* in such Case appointed; and the aforesaid *Thomas*, who sued as well for the said Lord the King as for himself, and the Poor of the Parish of *Saint Martin in the Fields* aforesaid, on the 30th Day of *October* in the 8th Year aforesaid, at *Westminster* in the County of *Middlesex*, before——*Bodington*, — *Lock* and — *Challoner*, Esquires, Commissioners of the Appeals aforesaid, in due Manner appointed for this Purpose, according to the Form of the Statute in such Case made and provided, to prove the said *Robert* guilty of the Premisses in the said Information specified, offered in Evidence certain Notes and Minutes of the Evidence given by *Thomas Everard*, *John Booth* and *Henry Caseburt*, then and now being in full Life, and residing at the City of *London*, Witnesses before the said Chief Commissioners and Governors of the Revenue, upon the Trial of the said Issue, before them then taken in Writing by one *Edward Noell*, Esq; Clerk to the said Chief Commissioners and Governors, without any lawful Authority: And altho' he the said *Robert Breedon* then and there alledged and objected to the aforesaid Commissioners of the Appeals, that the said Notes and Minutes ought not by the Laws to be read in Evidence, and prayed that the said *Thomas Everard*, *John Booth* and *Henry Caseburt* being then and now in full Life, as afore is set forth, might be produced to give *viva voce* Evidence upon their Oaths before the said Commissioners of the Appeals: But the said Commissioners notwithstanding have adjudged that the said Notes or Minutes so as aforesaid by the said *Edward Noell* taken, without any lawful Authority, should be read in Evidence, contrary to the Laws and Statutes of this Kingdom of *England*; the aforesaid *Thomas Gill* the Judgment so as aforesaid given by the Chief Commissioners and Governors of the Revenue of the said Lord the King of the Excise upon the Evidence aforesaid, daily endeavours and contrives with all his Power to procure to be confirmed, in Contempt of the said Lord the now King, and to the Damage, Prejudice and manifest Grievance of him the said *Robert Breedon*, and contrary to the Law and Custom of this Kingdom of *England*; and this he is ready to verify: Whereupon he

the

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the said *Robert Breedon* prays the Writ of the said Lord the King of Prohibition in this Behalf, to be directed to the said Commissioners of the Appeals, to prohibit them, least they admit the Notes and Minutes aforesaid in Evidence in the Cause aforesaid.

Hilary Term in the eighth Year of King William the Third.
Roll 371.

Shalmer against Pulteney. 1 *Ld. Raym.* 276.

Cooke.

Quod permit-
tat to pull
down certain
Buildings.

The Count.

Middlesex, (to wit) **G**RACE Pulteney, Widow, was summoned to answer *Richard Shalmer*, Gent, of a Plea that she permit him to pull down certain Buildings in the Parish of *Saint Martin in the Fields*, which *James Hulker* now deceased lately unjustly and without Judgment there built in the Freehold of the late *William Pulteney*, Knt. deceased, and now of the said *Grace Pulteney*, to the Nuisance of the Freehold of the said *William Shalmer* in the Parish of *Saint Martin in the Fields* aforesaid, within fifty Years now last past; and whereupon the said *Richard* by *Henry Dottin* his Attorney complains, that whereas on the 7th Day of *December* in the Year of our Lord 1655, the said *William Pulteney* then Esquire, afterwards Knight, was seised in his Demesne as of Fee of and in three Messuages, with the Appurtenances, in the Parish of *Saint Martin in the Fields* aforesaid in the County aforesaid, and also of and in a certain Yard or vacant Piece of Ground to the same Messuages on the East Part thereof next and contiguously adjoining, in which said Messuages there are and then were eleven Windows or Lights, being upon the East-Side of the same Messuages towards the said Yard or vacant Piece of Ground, and with the same Messuages then used and enjoyed, that is to say, three Windows or Lights in one of the said Messuages, three Windows or Lights in one other of the said Messuages, and five Windows or Lights in the third of the said Messuages, through which said Windows or Lights Light then came in to the said three Messuages, and used and ought to come in; and the said *William* being so seised of the three Messuages, with the Windows or Lights aforesaid, and of the said Yard or vacant Piece of Ground aforesaid, as before is set forth, on the same 7th Day of *December* in the Year of our Lord 1655 aforesaid, at the Parish aforesaid, granted to one *John Shalmer*, the Father of the said *Richard*, among

among other Things, the said three Messuages, together with all Easements, Profits, Commodities and Appurtenances whatsoever to the said Messuages belonging or in any Manner appertaining, or with them employed, used or enjoyed as Part, Parcel or Members thereof, or of any Part thereof; To have and to hold to the said *John Sbalmer* and his Heirs, to the Use of the said *John* and his Heirs: By Virtue whereof the said *John* of the aforesaid three Messuages, together with the Windows or Lights aforesaid, was seised in his Demesne as of Fee; and being so seised thereof, the aforesaid *John* afterwards, to wit, on the tenth Day of *February* in the Year of our Lord 1659, at the Parish aforesaid died, after whose Death the said three Messuages, with the Windows or Lights aforesaid, descended to the aforesaid *Richard*, as the Son and Heir of the said *John*, by which he the said *Richard* afterwards, to wit, the same Day and Year entred into the same Messuages, with the Appurtenances, and of the same three Messuages, with the Windows or Lights aforesaid, was seised in his Demesne as of Fee: And the said *Richard* being so seised of the three Messuages aforesaid, together with the Windows or Lights aforesaid, the aforesaid *James Hulker*, now deceased, on the first Day of *June* in the fourth Year of the Reign of the Lord *James* the Second, late King of *England*, &c. unjustly and without Judgment built upon the said Yard or vacant Piece of Ground aforesaid, then being the Freehold of the aforesaid *William Pulteney* then Knight, and now of the aforesaid *Grace Pulteney*, the said *James Hulker* being Tenant of the same Yard or vacant Piece of Ground for a Term of Years, certain Buildings next to, and so near the said Windows or Lights that the said Windows or Lights were then wholly obstructed and stopped up, and are yet obstructed and stopped up, to the Nuisance of the said Freehold of the said *Richard*: And although the said *Richard* hath often requested the said *Grace Pulteney* that she would permit him the said *Richard* to pull down the aforesaid Buildings so built to the Nuisance of the Freehold of him the said *Richard*, in Manner aforesaid, yet the said *Grace Pulteney* hath not hitherto permitted him the said *Richard* to pull down the same Buildings, nor yet permitteth, unjustly, to the Damage of him the said *Richard* of 500*l.* and thereupon he brings Suit, &c.

And the said *Grace* by *John Tiffer* her Attorney comes and defends the Force and Injury when, &c. and prays Judgment of the Writ aforesaid, because he saith, that where by that Writ it is said that the said *Grace* should permit

Plea in Abatement, for that the Writ doth not shew the Nature and Number of the Buildings.

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mit the said *Richard* to pull down certain Buildings in the Parish of Saint *Martin in the Fields*, that Writ in this Case is altogether uncertain, in not shewing the Nature or Number of the same Buildings, whereupon a certain Judgment may be given thereof; and also in this, that where by the said Writ it is supposed that one *James Hulker* built the said Buildings in the Freehold of the said *William Pulteney* within fifty Years now last past, there is not had any such Writ formed in the Book of the Register; and thus she is ready to verify: Wherefore she prays Judgment of the Writ, &c.

Demurrer.

And the said *Richard* saith, that he to the Plea aforesaid by her the said *Grace* pleaded in Abatement of the Writ in Manner and Form aforesaid hath no Necessity, nor is bound by the Law of the Land to answer, whereupon he prays Judgment, and that his said Writ may be adjudged good and that the Nuisance aforesaid may be removed, &c.

Joinder in Demurrer.

And the said *Grace*, for that she hath above alledged sufficient Matter in Law to abate the Writ aforesaid, which she is ready to verify; which said Matter he the said *Richard* doth not deny, nor in any Manner answer thereunto, but wholly refuses to admit that Averment, as before prays Judgment of the said Writ, &c. And because the Justices here will advise themselves of and concerning the Premises before they give Judgment thereupon, Day is given to the Parties aforesaid here until on the Morrow of the Ascension of our Lord, to hear their Judgment thereupon, for that the said Justices here are not thereof yet, &c.

Easter Term in the tenth Year of King William the Third

Osborne against Poole. 1 Ld. Raym. 236.

Tempest.

Suggestion for a Prohibition to the Court of Arches for Words, in a Libel commenced in the Bishop of *Litchfield's* Court, and removed to the Arches.

England, (to wit) **B**E it remembred, that on the 11th Day of May in this same Term here cometh into Court *Edward Osborne* by *Charles Hope* his Attorney, and gives the Court here to understand and be informed, That Sir *Richard Raines*, Knt. Doctor of Laws, Principal Official of the Consistory Court of the Bishop of *Litchfield and Coventry*, contriving to aggrieve, oppress and tire out him the said *Edward*, contrary to the due Form of Law of this Kingdom of *England*, and to draw him to other Trial in the Court Christian, him the said *Edward* by Colour of his Office, at the Promotion of *Barnabas Poole*

Clerk.

Clerk, Rector of the Rectory and Parish Church of Brailesford, for a certain pretended Cause of Contempt, Scandal and Defamation of the aforesaid *Barnabas*, hath lately drawn into Plea, by craftily and subtilly articling and objecting in the said Court Christian, before him the said Official, that he the said *Edward* in the Months of *March*, *April*, *May*, *June*, *July*, *August*, *September*, *October*, *November* and *December*, in the Year of our Lord 1696, within the Parish of *Brailesford* aforesaid, falsely and maliciously, to the Contempt, Disesteem and Scandal as well of his Person as of his Function, reproached, villified, publickly defamed and grievously affected him the said *Barnabas* by scandalous Words, and spoke the following *English* Words, or Words to the like Effect, to him the said *Barnabas*, (that is to say) *Thou or you* (meaning and imagining the said *Barnabas*) *art or are a pitiful, pimping Rascal*, with others such base Words, as by a true Copy of the said Articles brought here into Court more fully appears: And the aforesaid *Edward* gives the Court here to understand, that the Cause of speaking the Words aforesaid of the said *Barnabas* was, because he the said *Barnabas* at the Time of speaking the Words aforesaid in the Articles aforesaid mentioned, spoke of the said *Edward* these *English* Words following, (that is to say) *That he* (meaning him the said *Edward*) *was a Beggar, and was going to run his Country; and that if he* (meaning himself the said *Barnabas*) *could but ruin the said Edward Osborne, he* (meaning again himself the said *Barnabas*) *should have his End; and that he* (meaning again him the said *Edward*) *was used to steal his Neighbour's Ducks and Hens*, and thereby very much irritated and put him the said *Edward* into a Passion; and thereupon the said *Edward* in such his Passion spoke the *English* Words aforesaid in the said Articles mentioned, without any Malice or Intention to defame him the said *Barnabas* in his Person or Function; which said Cause of speaking the said Words he the said *Edward* in pleading hath alledged in the said Court Christian: Nevertheless the said Spiritual Judge, then being in the said Court Christian, wholly refused to receive the same Allegation, but hath unjustly threatened to proceed to a Sentence to condemn him the said *Edward* of and upon the Premises, and to pronounce Ecclesiastical Censures against him; whereupon afterwards and before any Sentence against him the said *Edward* was read or pronounced, or any Taxation of the Expences of the Suit aforesaid was made or had, the aforesaid Business of Complaint against him the said

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said *Edward*, at the Promotion of the said *Barnabas*, of and upon the Articles aforesaid, so as before is set forth, moved and prosecuted, by Virtue of a certain Appeal by him the said *Edward* in that Behalf had and made, was duly removed and transmitted from the said Court Christian, before the said Principal Official, into another Court Christian, before the venerable and excellent Man *George Oxenden*, Doctor of Laws, Dean or Official of the Pre-rogative Court of *Canterbury* of the Arches, *London*, or other President of the same Court, and in the same Court of Arches yet dependeth: And the same Official of the said Court of Arches, by Colour of his Office, at the Promotion of the said *Barnabas*, in the same Court of Arches prosecuting the said Appeal, hath further thereupon drawn into Plea and prosecuted there, and yet prosecutes him the said *Edward* of and for the Offence, Injury and ill Behaviour aforesaid, in the Articles aforesaid above specified by him the said *Edward* supposed to be done; and hath unjustly bound him the said *Edward* to answer in the said Court of Arches before him of and upon the Articles aforesaid, upon which the said *Edward* in the same Court of Arches in pleading hath alledged the same Matter, or cause of speaking the said Words in the Articles aforesaid mentioned, which he the said *Edward* in the said Court Christian of *Litchfield* and *Coventry* had alledged, as is above mentioned: Nevertheless the said Official of the said Court of Arches then being in the same Court likewise wholly refused to receive the same Allegation, but daily threatens to condemn him the said *Edward* of and upon the Premisses, and to pronounce Ecclesiastical Censures against him, in Contempt of the Lord the now King, and against the Laws and Custom of this Realm of *England*, and to the great Damage, Prejudice, Impoverishing and manifest Grievance of him the said *Edward*; and this the said *Edward* is ready to verify: Whereupon he the said *Edward*, most humbly imploring the Aid and Liberality of the Court of the Lord the now King here, prays Remedy, and the Writ of the said Lord the now King of Prohibition, to be directed to the said Spiritual Judge or Official of the aforesaid Court of Arches, or other competent Judge whatsoever in this Behalf, to prohibit him that he do not further hold Plea before him in any Manner touching the Premisses aforesaid, &c.

Trinity Term in the ninth Year of King William the Third.
Roll 1945.

Studholme and his Wife, Executrix of Morison, against
Mandall. 1 Ld. Raym. 279.

Cumberland, (to wit) **J**OH^N Mandall late of Bolton-Debt upon a
gate in the County aforesaid, Bond made to
Yeoman, otherwise called John Mandall of Higbball in the the Testator,
County of Cumberland, Miller, was summoned to answer
Richard Studbolme the Younger, Gent. and Judith his
Wife, Executrix of the Will of Richard Morison deceas-
ed, of a Plea that he render to them one hundred Pounds
of lawful Money of England, which he unjustly detains
from them; and whereupon they the said Richard and Ju-
dith by William Horsley their Attorney say, That whereas
the said John on the 25th Day of July in the 34th Year
of the Reign of the Lord Charles the Second, late King
of England, &c. at Wigton in the County aforesaid, by
his certain Writing obligatory granted himself to be bound
to the said Richard Morison in his Life-time in the said
100 l. to be paid to the said Richard, when he should be
thereunto requested: Nevertheless the said John, although
often requested, hath not rendered the said 100 l. to the
said Richard in his Life-time, or to the said Judith after
the Death of him the said Richard Morison while she was
Sole, or to them the said Richard Studbolme and Judith af-
ter the Espousals between them celebrated, but to render
the same to them, or either of them, hath denied, and yet
doth deny to render the same to the said Richard Studbolme
and Judith, and yet unjustly detains the same, whereupon
they say that they are injured, and have Damage to the
Value of 40 l. and thereupon they bring Suit, &c. And
they bring here into Court as well the Writing aforesaid,
which testifies the said Debt in Form aforesaid, the Date
whereof is the Day and Year abovesaid, as the Letters
Testamentary of the said Richard Morison, by which it
sufficiently appears to the Court here that the said Ju-
dith is Executrix of the Will aforesaid, and to have the
Administration thereupon, &c.

And the aforesaid John Mandall by John Pattison his At- Plea in Bar.
orney comes and defends the Force and Injury when, &c.
and prays Oyer of the Writing aforesaid, and it is read to Oyer of Con-
dition for the
him; he also prays Oyer of the Condition of the said Wri- dition for the
ing, and it is read to him in these Words, (to wit) The Performance
Condition of Covenants

in an Indenture between the Testator and Defendant.

Condition of this Obligation is such, that if the above-bounden *John Mandall*, his Executors, Administrators and Assigns, and every of them, do from Time to Time, and at all Times hereafter, well and truly observe, perform, fulfil and keep all and singular Covenants, Promises, Grants, Articles and Agreements contained, specified and declared, in one Pair of Indentures bearing even Date with these Presents, touching and concerning one *Milne* called *Highball Milne*, made between the above-named *Richard Morison* of the one Part, and the above-bounden *John Mandall* of the other Part, which on the Part and Behalf of the said *John Mandall*, his Executors, Administrators and Assigns, are or ought to be observed, performed, fulfilled and kept, according to the true intent and Meaning of the said Indentures, that then this Obligation to be void, or else to remain in Force with effect in Law; which being read and heard, he the said *John Mandall* saith, that the said *Richard Studholme* and *Judith* his Wife ought not to have their said Action against him, because he saith that the Indenture aforesaid in the said Condition above mentioned was made at *Wigton* aforesaid on the said 25th Day of *July* in the 34th Year of the Reign of the said late King *Charles* the Second aforesaid, between the said *Richard Morison*, by the Name of *Richard Morison* of *Cockermouth* in the County of *Cumberland*, Gent. of the one Part, and the aforesaid *John Mandall* by the Name of *John Mandall* of *Highball* in the County aforesaid, Miller, of the other Part, the Counterpart whereof, sealed with the Seal of him the said *Richard Morison*, he the said *John Mandall* brings here into Court, bearing Date the same Day and Year; by which said Indenture the said *Richard Morison* for and in Consideration of the Rent and Covenants in the same Indenture therein after expressed, and also for diverse other reasonable Considerations him thereunto moving, have demised, granted and to Farm letten, and by the same Indenture for himself, his Executors and Administrators, do demise, grant and to Farm let unto the said *John Mandall* all that his Water-Grist Mill, commonly called or known by the Name of the *Highball Mill*, with the Appurtenances situate and being in the Parish of *Westward* within the County aforesaid, then in the Tenure or Occupation of the said *John Mandall*; and also all Toll, Benefit and Custom for grinding of Corn and Grain whatsoever, and also all and singular Headwares, Mill-Ponds, Mill-Pools, Mill-Dams, Stranks, Banks, Ponds, Streams, Water, Waters

courtes

courfes, Ways, Paths, Passages, Easements, Profits, Commodities, Advantages, Emoluments and Appurtenances whatsoever to the said Mill belonging or in any Manner appertaining; To have and to hold the said demised Premises, with the Appurtenances, to the said *John Mandall*, his Executors, Administrators and Assigns, from the second Day of *February* then last past before the Date of the same Indenture, for and during and unto the full End and Term of 13 Years, from thence next following fully to be compleat and ended; Yielding and Paying therefore yearly during the said Term the yearly Rent or Sum of 8 l. 5 s. of lawful Money of *England*, at two Days of Payment in the Year, by even and equal Portions, that is to say, upon the first Day of *August* and upon the second Day of *February*: And the said *John Mandall* for himself, his Executors, Administrators and Assigns, did covenant, promise and agree to and with him the said *Richard Morison*, his Heirs, Executors, Administrators and Assigns, that he the said *John Mandall*, his Executors, Administrators and Assigns, would well and sufficiently find and provide all necessary Repairs whatsoever which should happen about the said Mill during the said Term, (except Wood for the same, which the said *Richard Morison* was to find if the same could be got within the Liberties of *Highball Devesne* or Farmhold): And the said *John Mandall* did covenant and promise to leave the said Mill in as good Repair, with all the Materials thereunto belonging, at the Expiration of the said Lease, as when he entered the same, to be viewed by four honest Neighbours, equally to be chosen between them. And the said *John Mandall* did covenant The Covenant and promise for himself, his Executors and Administrators, and promise for himself, his Executors and Administrators, to leave the Mill-stones upon the said Mill, at the Expiration of the said Term, as good as when he entered the main Question in the Cause arose. or else to give Satisfaction in Money for as much as they should be worse, according to the Discretion of the Parties that viewed the same at the first, as by the same Indenture, amongst other Things, more fully appears; which Averment of the Perform-ance of said Covenant. And the said *John* further Covenant, that he at the End and Expiration of the Term aforesaid left two Mill-stones in and upon the said Mill, and that the Parties who first viewed the Mill-stones which were on the said Mill at the Time of the Entry of him the said *John*, into that Mill have not hitherto agreed how much the said two Mill-stones by him left, at the Expiration

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General Performance as to the other Covenants.

Replication.
Oyer of the Indenture.

on of the said Term, were worse than the said Mill-stones in and upon the said Mill at the said Time of the Entry of him the said *John* thereupon. And the said *John* further saith, that he hath well and truly observed, performed, fulfilled and kept all and singular other the Covenants, Promises, Grants and Agreements contained, specified and declared in the said Indenture, on the Part of him the said *John Mandall*, to be observed, performed, fulfilled and kept, according to the Form and Effect of the said Indenture; and this he is ready to verify: Whereupon he prays Judgment if the said *Richard Studbolme* and *Judith* ought to have their said Action against him, &c.

And the aforesaid *Richard Studbolme* and *Judith* his Wife pray Oyer of the Indenture aforesaid; and it is read to them in these Words, (that is to say) This Indenture made the 25th Day of *July* in the 34th Year of the Reign of our Sovereign Lord *Charles* the Second, by the Grace of God, of *England, Scotland, France and Ireland* King, Defender of the Faith, &c. Annoq; Domini 1682, between *Richard Morison* of *Cockermouth* in the County of *Cumberland*, Gent. of the one Part, and *John Mandall* of *Highball* in the County aforesaid, Miller, of the other Part, witnesseth, That the said *Richard Morison*, for and in Consideration of the Rent and Covenants herein after in these Presents expressed, and also for divers other reasonable Considerations him thereunto moving, hath demised, granted and unto Farm letten, and by these Presents doth for himself, his Executors and Administrators, demise, grant and to Farm let unto the said *John Mandall* all that his Water-Grist-Mill, commonly called or known by the Name of *Highball Mill*, with the Appurtenances, situate and being in the Parish of *Westward* within the County aforesaid, now in the Tenure or Occupation of the said *John Mandall*, and also all Toll, Benefit and Custom for grinding of Corn and Grain whatsoever, and also all and singular Headwares, Mill-Ponds, Mill-Pools, Mill-Dams, Stanks, Banks, Ponds, Streams, Water, Water-courses, Ways, Paths, Passages, Easements, Profits, Commodities, Advantages, Emoluments and Appurtenances whatsoever to the said Mill belonging or in any wise appertaining; To have and to hold the said Mill with the Appurtenances, and all Toll, Benefit and Custom of grinding of all Corn and Grain whatsoever, with all and singular Headwares, Mill-Ponds, Mill-Pools, Mill-Dams, Stanks, Banks, Ponds, Streams, Water, Watercourses, Ways, Paths, Passages, Easements, Profits, Commodities, Advantages, Emoluments and Appurtenances

purtenances

appurtenances whatsoever herein before mentioned, unto the
 said *John Mandall*, his Executors, Administrators and As-
 signs, from the second Day of *February* last past before the
 Date hereof, for and during and unto the full End and
 Term of 13 Years from thence next ensuing and fully to
 be compleat and ended; Yielding and paying therefore
 yearly during the said Term the yearly Rent or Sum of 8 l.
 and 5 s. lawful *English* Money, at two Days of Payment
 in the Year, by even and equal Portions, viz. upon the
 first Day of *August* and upon the second Day of *February*.
 And the said *John Mandall* doth for himself, his Execu-
 tors and Administrators, covenant, promise and grant to
 and with him the said *Richard Morison*, his Heirs, Execu-
 tors, Administrators and Assigns, that he the said *John*
Mandall shall and will well and sufficiently find and pro-
 vide all necessary Repairs whatsoever which shall happen
 to be about the said Mill during the aforesaid Term, ex-
 cept Wood for the same, which the said *Richard Morison*
 is to find, if the same can be got, within the Liberties of
Higbball Demesne or Farmhold. And the said *John Man-*
dall doth covenant and promise to leave the said Mill in as
 good Repair with all the Materials thereunto belonging,
 at the Expiration of the said Lease, as when he entered
 the same, to be viewed by four honest Neighbours, equal-
 ly chosen between them. And the said *John Mandall*, his
 Executors, Administrators and Assigns, is to have one Cow-
 grafs in Summer, and one Horse-grafs in Winter yearly
 during the said Term within the Farmhold of the said
Higbball, the Cow-grafs in Summer to be in Wood-closes,
 Fog-closes and New-riving, or in some of them, and
 the Horse to be wintered in all or some of the said Closes.
 And it is further agreed upon by these Presents, That
 he the said *John Mandall*, his Executors, Administra-
 tors and Assigns, for and under the Payment of the said
 yearly Rent of 8 l. and 5 s. above by these Presents re-
 served in Manner and Form aforesaid, and performing, ful-
 filling and keeping all and singular the Covenants, Grants,
 Articles and Agreements before in these Presents contained,
 which on his and their Parts are and ought to be observed,
 performed, fulfilled and kept, shall and may lawfully,
 peaceably and quietly have, hold, occupy, possess and enjoy
 all and singular the said demised Premises, and every Part
 and Parcel thereof, with their and every of their Appurte-
 nances, without lawful Let, Suit, Trouble, Eviction,
 Ejection, Molestation or Interruption whatsoever of him
 the said *Richard Morison*, his Executors, Administrators or
 Assigns,

PLEADINGS TO THE CASES.

Breach al-
signed.

Rejoinder,
which is no
more than a
Repetition of
the Bar.

Assigns, or any of them, during the aforesaid Term. And the said *John Mandall* doth covenant and promise for himself, his Executors and Administrators, to leave Mill-stones upon the said Mill, at the Expiration of the aforesaid Term, as good, as when he entered, or else to give Satisfaction in Money for as much as they shall be worth, according to the Discretion of the Parties that viewed the same at the first. In witness whereof the Parties aforesaid interchangeably have hereunto set their Hands and Seals the Day and Year first above-written. Memorandum, it is agreed unto by the said Parties before the Sealing hereof, That whereas the Stones that was upon the said Mill was then valued at three Pounds, if the said *John Mandall* leaves Stones upon the said Mill at the End of the said Lease better than the said Sum, then he to have the Overplus returned; which being read and heard, they the said *Richard Studbolme* and *Judith* his Wife say, that they by any Thing before alledged ought not to be barred from having their said Action thereof against the said *John Mandall*, because they say, that at the Time of the making of the said Indenture, and also at the same Time when he the said *John Mandall* entered upon the said Mill to him demised, as before is set forth, to wit, on the 26th Day of July in the 34th Year of the Reign of the said late King *Charles* the Second, there were two Mill-stones of the Value of 3*l.* remaining and being in the same Mill for the Use of that Mill, and that at the End and Expiration of the Term of Years aforesaid in the Indenture aforesaid above-mentioned, the said *John Mandall* did not leave Mill-stones in or upon the Mill aforesaid as good as the said two Mill-stones were at the said time of the Entry of him the said *John Mandall* upon the Mill aforesaid to him demised, as before is set forth, nor hath given any Satisfaction in Money to any Person whatsoever for so much as the Mill-stones by him the said *John Mandall* in the same Mill left were worse than the said two Mill-stones being in the same Mill at the Time of the said Entry of him the said *John Mandall*; and this they the said *Richard Studbolme* and *Judith* his Wife are ready to verify: Whereupon they pray Judgment and their Debt aforesaid, together with their Damages by reason of the detaining of that Debt, to be adjudged to them, &c.

And the said *John Mandall* as before saith that he at the End and Expiration of the Term aforesaid left two Mill-stones in and upon the said Mill, and that the Parties who first viewed the Mill-stones which were upon the said Mill

at the Time of the Entry of him the said *John* into that Mill have not hitherto agreed how much the said two Mill-stones by him left at the Expiration of the said Term, as afore is set forth, were worse than the said Mill-stones in and upon the said Mill at the said Time of the Entry of him the said *John* thereupon; and this he is ready to verify: Whereupon as before he prays Judgment, and that the said *Richard* and *Judith* may be barred from having their said Action against him, &c.

Demurrer, and Joinder in Demurrer,

Trinity Term in the eighth Year of the Reign of King William the Third. Roll 1453.

Bates, Widow, against Bates. Ld. Raym. 326.

Northumberland, (to wit) *ANN* Bates, Widow, who was Count in the Wife of *Ralph* Bates, Esq; Dower,

by *Edward Hansley* her Attorney demands against *Thomas Bates*, Gent. the third Part of twenty Messuages, two Gardens, 800 Acres of Land, 800 Acres of Meadow, 1000 Acres of Pasture and 1000 Acres of Moor, with the Appurtenances, in *Hertsford*, *East Harford*, *Halliwell*, *Milburne*, and the Parishes of *Woodborne*, *Garsden* and *Pont Island*, as her Dower of the Endowment of the aforesaid *Ralph*, sometime her Husband, whereof she nothing hath, &c.

And the said *Thomas* by *Robert Bewicke*, Esq; who is Tenant by admitted by the King's Court here to prosecute for the said Guardian *Thomas* who is within Age, as the Guardian of him the said pleads *Ne Un-* *Thomas*, comes and says, that the aforesaid *Ann* ought not *ques Seisie que* to have her Dower of the Tenements aforesaid with the Dower.

Appurtenances, of the Endowment of the said *Ralph*, sometime her Husband, because he says, that the said *Ralph*, sometime her Husband neither on the Day when he married the aforesaid *Ann*, not at any Time afterwards, was seised of the Tenements aforesaid, with the Appurtenances, whereof, &c. of such Estate, so that the said *Ann* could be endowed thereof; and of this he puts himself up- Issue to the on the Country, and the said *Ann* likewise: Therefore the Country. Sheriff is commanded, that he cause to come here in three *Venire* award- Weeks from the Day of the Holy Trinity twelve, &c. by ed. whom, &c. and who neither, &c. to recognize, &c. because as well, &c. At which Day the Jury between the Parties aforesaid of the Plea aforesaid is respited thereupon between them here until this Day, that is to say, from the Day of St. Michael in three Weeks then next following, unless the Justices of the Lord the King, assigned *Nisi prius*.

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The Poſtea.

Tales.

Special Verdict as to Part.

That R. B. the Father of the Husband was ſeiſed in Fee, &c.

to take the Affizes in the County aforeſaid by Form of the Statute, &c. ſhall before come on *Saturday* the 8th Day of *Auguſt* next, paſt, at the Caſtle of *Newcaſtle upon Tyne* in the County aforeſaid. And now here at this Day come as well the ſaid *Ann* by her Attorney aforeſaid, as the ſaid *Thomas* by his Guardian aforeſaid: And the ſaid Juſtices before whom at the Affizes, &c. have ſent here their Record in theſe Words: Afterwards on the Day and at the Place within contained, before *Edward Ward*, Knt. Chief Baron of the Exchequer of the Lord the King, and *John Turton*, Knt. one of the Juſtices of the Lord the King, assigned to hold Pleas before the King himſelf, Juſtices of him the ſaid Lord the King, assigned to take the Affizes in the County of *Northumberland* by Form of the Statute, &c. come as well the within named *Ann Bates* by her Attorney within contained, as the within written *Thomas Bates* by his Guardian within written; and the Jurors of the Jury, whereof Mention is within made, being called, ſome of them, that is to ſay, *Francis Huntridge*, *Lionel Windſhip*, *John Hall*, *Gerard Browel*, *John Alder*, *Roger Sparwen*, *Chriſtopher Milburne* and *Thomas Armorer* came, and are ſworn upon that Jury. And becauſe the Reſt of the Jurors of the ſame Jury did not appear, therefore others of the By-ſtanders, choſen by the Sheriff of the County aforeſaid, at the Requeſt of the ſaid *Ann Bates*, and by command of the Juſtices aforeſaid, are newly appointed, whole Names are affiled in the Panel within written, according to the Form of the Statute in ſuch Caſe made and provided; which ſaid Jurors ſo newly appointed, that is to ſay, *Cuthbert Heron*, *John Wade*, *Thomas Reanly* and *George Harle* being called likewise came, who being choſen, tried and ſworn to ſpeak the Truth concerning the Matter within contained, together with the other Jurors aforeſaid before impanelled, as to 15 Meſſuages, two Gardens, 600 Acres of Land, 600 Acres of Meadow, 800 Acres of Paſture and 800 Acres of Moor, with the Appurtenances, in *Hertford*, *Eaſt Harford*, *Hallixwell*, and the Pariſhes of *Woodborne* and *Garſden* within written, Parcel of the Tenements within ſpecified, ſay upon their Oath, that long before the Eſpouſals celebrated between the aforeſaid *Richard Bates* and the ſaid *Ann*, one *Ralph Bates*, Eſq; the Father of him the ſaid *Ralph Bates*, ſometimes her Husband, &c. was ſeiſed of and in the aforeſaid Parcel of the Tenements aforeſaid with the Appurtenances, in his Demefne as of Fee; and he the ſaid *Ralph Bates* the Father being ſo ſeiſed thereof, he the ſaid *Ralph Bates* the Father on the 23d Day of

May

May in the 29th Year of the Reign of the Lord *Charles* the Second, late King of *England*, &c. by a certain Indenture made between him the said *Ralph Bates* the Father and the within named *Ralph Bates*, the Son of the said *Ralph* the Father, by the Names of *Ralph Bates* of *Halliwel* in the County of *Northumberland*, Esq; and *Ralph Bates*, the Son and Heir apparent of the said *Ralph Bates* of the one Part, and *Robert Bewicke*, Esq; and *Thomas Bewicke*, Gent. by the Names of *Robert Bewicke*, of *Clofehouse* in the County of *Northumberland*, Esq; and *Thomas Bewicke* of the Town and County of *Newcastle upon Tyne*, Gent. of the other Part, sealed with the Seals of the aforesaid *Ralph Bates* the Father, and *Ralph Bates* the Son, to the Jury aforesaid in Evidence shewn, the Date whereof is the Day and Year last aforesaid, for and in Consideration of five Shillings of lawful Money of *England* to the said *Ralph Bates* the Father and *Ralph Bates* the Son by the said *Robert Bewicke* and *Thomas Bewicke* paid, bargained and sold to the said *Robert Bewicke* and *Thomas Bewicke* and their Assigns, the aforesaid Parcel of the Tenements aforesaid, with the Appurtenances, amongst other Things; and the said *Ralph Bates* the Son, by the same Indenture confirmed the aforesaid Bargain and Sale; To have and to hold the aforesaid Parcel of the Tenements aforesaid, with the Appurtenances, to the said *Robert Bewicke* and *Thomas Bewicke* and their Assigns, from the Day next before the Date of the Indenture aforesaid, for and during the Term of one Year then next following; by Virtue of which said Bargain and Sale, and by Force of the Statute in the Parliament of the Lord *Henry* the Eighth, late King of *England*, holden in the 27th Year of his Reign, made and provided for transferring of Uses into Possession, the aforesaid *Robert Bewicke* and *Thomas Bewicke* were possessed of the said Parcel of the Tenements aforesaid, with the Appurtenances; and being so possessed thereof, and the said *Ralph Bates* the Father being seized in his Demesne as of Fee of the Reversion thereof, he the said *Ralph Bates* the Father afterwards, to wit, on the 24th Day of *May* in the 29th Year of the Reign of the said late King *Charles* the Second aforesaid, by a certain other Indenture made between them the said *Ralph Bates* the Father and *Ralph Bates* the Son of the one Part, and the aforesaid *Robert Bewicke* and *Thomas Bewicke* of the other Part, and sealed with the Seals of the said *Ralph* and *Ralph* to the Jurors in Evidence shewn, the Date whereof is the Day and Year last aforesaid, for the Considerations in the same Indenture mentioned,

ed,

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ed, granted and released to the said *Robert Bewicke* and *Thomas Bewicke*, and their Heirs, the aforesaid Parcel of the Tenements aforesaid, with the Appurtenances, amongst other Things, and the Reversion thereof; and the said *Ralph Bates* the Son confirmed the said Grant and Release; To have and to hold to the aforesaid *Robert Bewicke* and *Thomas Bewicke* and their Heirs, to the Uses, Intentions and Purposes, and under the Provisoes and Limitations in the same Indenture last abovesaid of and concerning the said Parcel of the Tenements aforesaid, with the Appurtenances, limited, declared and expressed, the Tenor of which said Indenture follows in these Words: This Indenture made the 24th Day of *May* in the 29th Year of the Reign of our Sovereign Lord *Charles* the Second, by the Grace of God, of *England, Scotland, France and Ireland* King, Defender of the Faith, &c. between *Ralph Bates* of *Halliwell* in the County of *Northumberland*, Esq; and *Ralph Bates* Son and Heir apparent of the said *Ralph Bates*, of the one Part, and *Robert Bewicke* of *Clofebouse* in the County of *Northumberland*, Esq; and *Thomas Bewicke* of the Town and County of *Newcastle upon Tyne*, Gent. of the other Part, witnesseeth, that the said *Ralph Bates* the Father and *Ralph Bates* the Son, for and in Consideration of the Sum of five Shillings of good and lawful Money of *England*, to them in Hand paid by the said *Robert Bewicke* and *Thomas Bewicke* before the Sealing and Delivery hereof, the Receipt whereof they do hereby acknowledge, and for and in Consideration of a Marriage, by God's Permission, to be shortly had and solemnized by and between the said *Ralph Bates* the Son and *Margaret Bewicke*, Daughter of *Thomas Bewicke* of *Clofebouse* aforesaid, Esq; and in Consideration of a Marriage Portion to be paid by the said *Thomas Bewicke* the Father, and for providing a competent Jointure and Maintenance for the said *Margaret*, in Case she should survive the said *Ralph Bates* her intended Husband, and for settling the Lands, Tenements and Hereditaments hereafter mentioned, have given, granted, bargained and sold, released and confirmed, and by these Presents do for them and their Heirs give, grant, bargain and sell, release and confirm unto the said *Robert Bewicke* and *Thomas Bewicke*, their Heirs and Assigns, all and every the Manors, Lordships, Demesnes, Towns, Townships, Capital Messuages, Farmholds, Lands, Tenements and Hereditaments of *Halliwell, Milburne and East Hertford*, with their and every of their Rights, Members and Appurtenances, situate, lying and being in the said County of *Northumberland*, together with

with all Messuages, Houses, Edifices, Buildings, Barns, Byars, Stables, Gardens, Orchards, Mills, Waters, Water-courses, Lands, Meadows, Pasture, Commons, Common of Pasture, Moors, Wastes, Warrens, Rents, Services, Royalties, Privileges, Emoluments, Profits, Commodities, Advantages and Appurtenances whatsoever to the said Manors, Lordships, Demesnes, Towns, Townships, Capital Messuages, Farmholds, Lands, Tenements, Hereditaments and Premises, or any of them, or any Part or Parcel thereof belonging or in any wise appertaining, or now or at any Time heretofore commonly used, occupied or enjoyed, reputed, taken or known as Part, Parcel or Member thereof, or any Part or Parcel thereof, and also all other the Messuages, Lands, Tenements and Hereditaments whatsoever of them the said *Ralph Bates* the Father and *Ralph Bates* the Son, or either of them, lying or being within the said County of *Northumberland*, and the Reversion and Reversions, Remainder and Remainders of all and singular the said Premises; To have and to hold all and every the said Manors, Lordships, Demesnes, Towns, Townships, and Capital Messuages, Farmholds, Lands, Tenements, Hereditaments and Premises, and every Part and Parcel thereof, with their and every of their Appurtenances to the said *Robert Bewicke* and *Thomas Bewicke* and their Heirs, to the Uses, Intents and Purposes, and under the Provisoes and Limitations hereafter mentioned, (that is to say) As for and concerning the Manor, Lordship, Town, Township, Farmholds, Lands, Tenements and Hereditaments of *Milburne* aforesaid, to the Use and Behoof of the said *Ralph Bates* the Son, for and during the Time of his natural Life, without Impeachment of or for any Manner of Waste; and from and after the Death of the said *Ralph Bates* the Son, then to the Use and Behoof of the said *Margaret Bewicke* his intended Wife, for and in Lieu of her Jointure, and in full Satisfaction of all her Right and Title of Dower to all and every the Lands and Tenements whereof the said *Ralph Bates* shall be seised during the Coverture between them, and after the Death of the said *Margaret Bewicke*, to the Use and Behoof of the first Son of the Body of the said *Ralph Bates* the Son upon the Body of the said *Margaret Bewicke* his intended Wife lawfully to be begotten, and to the Heirs Males of the Body of such first Son lawfully to be begotten; and in Default of such Issue, then to the Use and Behoof of the second Son of the Body of the said *Ralph Bates* upon the Body of the said *Margaret* lawfully to be begotten, and to the Heirs Males of

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of the Body of such second Son lawfully to be begotten; and in Default of such Issue, then to the Use and Behoof of the third Son of the Body of the said *Ralph Bates* upon the Body of the said *Margaret Bewicke* lawfully to be begotten, and to the Heirs Males of such third Son lawfully to be begotten; and in Default of such Issue, then to the Use and Behoof of the fourth Son of the Body of the said *Ralph Bates* upon the Body of the said *Margaret* lawfully to be begotten, and to the Heirs Males of the Body of such fourth Son lawfully to be begotten; and in Default of such Issue, then to the Use and Behoof of the fifth Son of the Body of the said *Ralph Bates* upon the Body of the said *Margaret* lawfully to be begotten, and to the Heirs Males of the Body of such fifth Son lawfully to be begotten; and in Default of such Issue, then to the Use and Behoof of the sixth Son of the Body of the said *Ralph Bates* upon the Body of the said *Margaret* lawfully to be begotten, and to the Heirs Males of the Body of such sixth Son lawfully to be begotten; and in Default of such Issue, then to the Use and Behoof of the seventh, eighth, ninth, tenth, eleventh, and twelfth Son, and all and every the other Son and Sons of the Body of the said *Ralph Bates* the Son upon the Body of the said *Margaret* lawfully to be begotten, severally and respectively, and to the Heirs Males of the Body of every such seventh, eighth, ninth, tenth, eleventh and twelfth and every other Son or Sons of the Body of the said *Ralph Bates* upon the Body of the said *Margaret* lawfully to be begotten, severally and respectively, the Elder and the Heirs Males of his Body always to be preferred before the Younger and the Heirs Males of his Body, according to their several Priority of Birth and Seniority of Age respectively; and in Default of such Issue, then to the Use and Behoof of the Heirs Males of the Body of the said *Ralph Bates* the Son; and in Default of such Issue, then to the Use and Behoof of the said *Ralph Bates* the Father and the Heirs Males of his Body lawfully begotten or to be begotten; and in Default of such Issue, then to the Use and Behoof of the right Heirs of the said *Ralph Bates* the Son for ever; and as for and concerning the Manors, Lordships, Town, Townships, Lands, Tenements and Hereditaments of *Halliwell* and *East Hartford* aforesaid, to the Use, Intent and Purpose that it shall and may be lawful to and for the said *Ralph Bates* the Father and *Margaret* his Wife during their two natural Lives, and the Life of the longer Liver of them, to have, take, perceive and receive out of the same the yearly

yearly Sum or Rent of one hundred and twenty Pounds of lawful Money of *England*, at four Days or Times in the Year, that is to say, the Feast of *Saint Philip and Jacob*, commonly called *May-Day*; the first Day of *August*, commonly called *Lammas-Day*; the Feast of *Saint Martin* the Bishop in Winter, commonly called *Martinmas-Day*, and the second Day of *February*, commonly called *Candlemas-Day*, by even and equal Portions; the first Payment thereof to begin at or upon the Feast of *Saint Philip and Jacob*, commonly called *May-Day* next ensuing the Date hereof; and if it shall happen that the said yearly Rent or Sum of one hundred and twenty Pounds, or any Part or Parcel thereof, shall be behind in Arrear or unpaid by the Space of twenty Days next after any of the said Feasts or Times whereon the same ought to be paid as aforesaid, that then it shall and may be lawful to and for the said *Ralph Bates* the Father and *Margaret* his Wife, and the longer Liver of them, into the said Manors, Lordships, Towns, Townships, Lands, Tenements and Hereditaments of *Halliwell* and *East Hartford*, and every or any Part or Parcel of them, or either of them, to enter and distrain, and the Distress and Distresses there found to take, lead, drive and carry away, and the same to hold, detain and impound, until the said Rent and Arrearages thereof shall be fully paid and satisfied; and to the further Use, Intent and Purpose, that it shall and may be lawful to and for *Mark Bates* second Son of the said *Ralph Bates* the Father, during his natural Life, to have, hold, perceive and receive out of the said Manors, Lordships, Towns, Townships, Lands, Tenements and Hereditaments of *East Hartford*, the yearly Rent or Sum of thirty Pounds of lawful Money of *England*, at two Days and Times in the Year, (that is to say) the first Day of *August*, commonly called *Lammas-Day*, the second Day of *February*, commonly called *Candlemas-Day*, by even and equal Portions; the first Payment thereof to begin at or upon the first Day of *August* next ensuing the Date hereof; and if it shall happen that the said yearly Rent or Sum of thirty Pounds, or any Part or Parcel thereof, shall be behind in Arrear or unpaid by the Space of twenty Days next after any of the said Feasts or Times whereon the same ought to be paid as aforesaid, that then it shall and may be lawful to and for the said *Mark Bates* into the said Manors, Lordships, Towns, Townships, Lands, Tenements and Hereditaments of *East Hartford*, and every or any Part or Parcel thereof to enter and distrain, and the Distress or Distresses there found to take, lead, drive and carry away, and the

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the same to hold, detain and impound, until the said Rent of thirty Pounds, and the Arrearages thereof, be fully paid and satisfied. And further as for and concerning the said Manor, Lordship, Town, Township, Lands, Tenements and Hereditaments of *Halliwell* and *East Hartford* so charged as aforesaid, the same shall go and be to the Use and Behoof of the said *Ralph Bates* the Son, for and during his natural Life, without Impeachment of or for any Manner of Waste; and after his Decease, to the Use and Behoof of the said *Robert Bewicke* and *Thomas Bewicke* Parties to these Presents their Executors and Administrators for and during the Time and Times of ninety and nine Years from thenceforth next ensuing fully to be compleat, ended and run: Nevertheless upon the Trust, and subject to the Intents and Purposes hereafter in or by these Presents mentioned and declared, and from and after the Expiration or other Determination of the said Time of ninety and nine Years, then to the Use and Behoof of the Heirs Males of the Body of the said *Ralph Bates* the Son lawfully begotten and to be begotten; and in Default of such Issue, then to the Use and Behoof of the said *Ralph Bates* the Father lawfully begotten; and in Default thereof, to the Use of the right Heirs of the said *Ralph Bates* the Son for ever. And it is by these Presents provided and declared, that the said Term for ninety and nine Years unto the said *Robert Bewicke* and *Thomas Bewicke* shall, and is hereby declared to be upon this Trust and Confidence, and to the Intent and Purpose, that in Case the said *Ralph Bates* the Son should die without Issue Male of his Body lawfully begotten upon the Body of the said *Margaret Bewicke* his intended Wife, leaving one or more Daughter or Daughters between him and the said *Margaret*; or in Case the said Issue Male of the said *Ralph* and *Margaret* shall fail in the Life-time of such Daughter or Daughters, that then the said *Robert Bewicke* and *Thomas Bewicke*, their Executors, Administrators or Assigns, or some of them, shall levy and raise out of the clear Rents, Issues and Profits of the said Manors, Lordships, Towns, Townships, Lands, Tenements and Hereditaments of *Halliwell* and *East Hartford* aforesaid, the full and just Sum of fifteen hundred Pounds of good and lawful Money of *England*, to be paid unto such Daughter or Daughters, and if more than one, to be equally divided amongst them; and also shall levy, raise and provide out of the said clear Rents, Issues and Profits thereof, convenient and sufficient Maintenance for such Daughter or Daughters, according to their Degree and Quality, until the whole Sum of fifteen hundred

hundred Pounds shall be fully raised and levied; and if any of the said Daughter or Daughters shall die before she attain the full Age of one and twenty Years, or be married, that then the Part or Portion of each Daughter so dying shall fall and be paid to the surviving Daughter or Daughters; and after the said Sum of fifteen hundred Pounds so raised and paid as aforesaid, then the said Term of ninety-nine Years shall cease and determine: And the said *Ralph Bates* the Father and *Ralph Bates* the Son do for themselves, their Heirs, Executors and Administrators and every of them, covenant, grant and agree to and with the said *Robert Bewicke* and *Thomas Bewicke*, their Executors, Administrators and Assigns, and every of them, that all and every the said Manors, Lordships, Towns, Townships, Lands, Tenements and Hereditaments above mentioned, shall remain, continue and be to the Uses, Intents and Purposes above mentioned, and that the said Manor, Lordship, Town, Township, Lands, Tenements and Hereditaments of *Milburne* limited in Jointure to the said *Margaret Bewicke* intended Wife of the said *Ralph Bates* the Son as aforesaid, and every Part and Parcel thereof, shall remain, continue, and be clear and free of or from all Titles, Charges and Incumbrances whatsoever during the natural Life of the said *Margaret Bewicke*; and the said *Ralph Bates* the Father and *Ralph Bates* the Son do for themselves, their Heirs, Executors, Administrators and Assigns severally covenant, grant and agree to and with the said *Robert Bewicke* and *Thomas Bewicke*, their Executors, Administrators and Assigns, that the said *Ralph Bates* the Father and *Ralph Bates* the Son, or the one of them, now are or is at the Time of Sealing and Delivery of these Presents lawfully and rightfully seised in their, or the one of their Demesne as of Fee, of and in the said Manors, Lordships, Towns, Townships, Lands, Tenements, Hereditaments and Premises, of and in a good and absolute Estate in the Law of Fee-simple, and that they the said *Ralph Bates* the Father and *Ralph Bates* the Son, or the one of them, now have or hath good Power and Authority in the Law to grant the Premises above mentioned to the Uses, Intents and Purposes aforesaid, and that the same are or shall be freed or otherwise well and sufficiently saved harmless and indemnified of and from all and all Manner of Incumbrances whatsoever committed, done or suffered by the said *Ralph Bates* the Father and *Ralph Bates* the Son, or either of them, and that they the said *Ralph Bates* the Father

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ther and *Margaret* his Wife, and *Ralph Bates* the Son; and every other Person or Persons lawfully claiming or to claim by, from or under them, or either or any of them, shall and will from Time to Time, and at all Times hereafter within the Space of seven Years next ensuing, upon the reasonable Request of the said *Robert Bewicke* and *Thomas Bewicke* their Executors, Administrators or Assigns, and at the proper Costs and Charges of the said *Ralph Bates* the Father and *Ralph Bates* the Son, make, do, acknowledge, levy, suffer, perfect, finish and execute, or cause to be made, done, acknowledged, levied, suffered, perfected, finished, and executed all and every such further and other lawful and reasonable Act and Acts, Thing and Things, Conveyance and Conveyances, Assurance or Assurances in the Law whatsoever for the further, better and more perfect granting, conveying, assuring and securing of the said Manors, Lordships, Towns, Townships, Lands, Tenements, Hereditaments and Premises, and every Part and Parcel thereof, to the Uses, Intents and Purposes aforesaid, be it by Deed or Deeds, Fine or Fines with Proclamations or without, Recovery or Recoveries with single or double Voucher or Vouchers, or by all or any of the said Ways or Means, or by any other Ways or Means whatsoever, as by the said *Robert Bewicke* and *Thomas Bewicke*, their Heirs, or Assigns, or any of them, or their or any of their Council learned in the Law, shall or may be reasonably devised, advised or required. In witness whereof the said Parties to these present Indentures interchangeably have set their Hands and Seals the Day and Year first above-written: And the said Jurors further say upon their Oath, that the aforesaid Manors, Tenements and Hereditaments of *Halliwell* and *East Hartford* in the said Indenture last mentioned specified, lie and be in *Hertford*, *East Hartford*, *Halliwell*, and the Parishes of *Woodborne* and *Garston* within mentioned, and are the aforesaid Parcel of the Tenements aforesaid with the Appurtenances within specified, and that after the making of the Indentures aforesaid, to wit, on the 29th Day of *June* in the 29th Year aforesaid, the Espousals were celebrated between the aforesaid *Ralph Bates* the Son and the said *Margaret Bewicke*, and that the said *Ralph Bates* the Son by Virtue of the Grant aforesaid, and by Force of the Statute aforesaid, was seised of the said Parcel of the Tenements aforesaid with the Appurtenances as the Law requireth; and they the said *Ralph Bates* the Son and *Margaret* after the Espousals were celebrated between them, as before is set forth, had Issue of their Bodies lawfully

fully begotten the aforesaid *Thomas Bates*, the now Tenant, their first begotten Son, and one *R. Bates* their second Son, and they had no other Issue of their Bodies begotten; and afterwards the said *Margaret*, who was married to the said *Ralph Bates* the Son as aforesaid, and the said *R. Bates*, and the said *Ralph Bates* the Father and *Margaret* his Wife died, and the said *Ralph Bates* the Son survived the said *Margaret* his Wife, and the said *Ralph Bates* the Father and *Margaret* his Wife; and the said *Ralph Bates* the Son being seised of the aforesaid Parcel of the Tenements aforesaid with the Appurtenances, as before is set forth, afterward married to his Wife the aforesaid *Ann*, the now Demandant: And moreover the said Jurors say upon their Oath aforesaid, that the said *Ralph Bates*, sometime her Husband, on the Day when he espoused the aforesaid *Ann* and afterwards was seised of the aforesaid Parcel of the Tenements aforesaid with the Appurtenances, by Virtue of the Indenture aforesaid and by Force of the said Statute for transferring of Uses into Possession as the Law requireth, according to the Form and Effect of the Indenture aforesaid; and being so seised thereof, afterwards died seised of such his Estate thereof: And as to the Residue of the Tenements within written with the Appurtenances, they the said Jurors upon their Oath aforesaid say, that the within named *Ralph Bates* sometime the Husband, &c. neither upon the Day when he married the aforesaid *Ann*, nor at any Time afterwards, was seised of the said Residue of the Tenements aforesaid with the Appurtenances, of such his Estate so that the said *Ann* the now Demandant could be endowed thereof, as the aforesaid *Thomas Bates* within in Pleading thereof hath alleged: But whether upon the whole Matter aforesaid by the Jurors aforesaid above found, the said *Ralph Bates* sometime the Husband, &c. on the Day when he married the aforesaid *Ann* the now Demandant, or at any Time afterwards, was seised of the said 15 Messuages, two Gardens, 600 Acres of Lands, 600 Acres of Meadow, 800 Acres of Pasture and 800 Acres of Moor with the Appurtenances, in *Hertford*, *East Hartford*, *Halliwell*, and the Parishes of *Woodborne* and *Garfdon* aforesaid, whereof, &c. of such his Estate so that the said *Ann* could be endowed thereof or not, they the said Jurors are wholly ignorant, and thereupon pray the Advice of the Court here; and if upon the whole Matter aforesaid in Form aforesaid found it shall seem to the Court here that the said *Ralph* sometime

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the Husband, &c. on the Day when he married the said *Ann* the now Demandant, and afterwards, was seised of the said 15 Messuages, two Gardens, 600 Acres of Land, 600 Acres of Meadow, 800 Acres of Pasture and 800 Acres of Moor with the Appurtenances, whereof, &c. of such his Estate so that the said *Ann* could be endowed thereof, then the Jurors aforesaid say upon their said Oath, that the said *Ralph*, sometime the Husband of the said *Ann* the now Demandant, on the Day when he married the said *Ann*, and afterwards, was seised of the said 15 Messuages, two Gardens, 600 Acres of Land, 600 Acres of Meadow, 800 Acres of Pasture and 800 Acres of Moor with the Appurtenances, whereof, &c. of such his Estate so that the said *Ann* could be endowed thereof; and that the said *Ralph*, sometime the Husband, &c. of the said 15 Messuages, two Gardens, 600 Acres of Land, 600 Acres of Meadow, 800 Acres of Pasture and 800 Acres of Moor with the Appurtenances, whereof, &c. of such his Estate being seised, on the 27th Day of July in the 7th Year of the Reign of the late the now King died so seised thereof, and that the said 15 Messuages, two Gardens, 600 Acres of Land, 600 Acres of Meadow, 800 Acres of Pasture and 800 Acres of Moor with the Appurtenances, whereof, &c. are worth 270 l. by the Year in all Issues beyond Reprises; and they assess the Damages of her the said *Ann* the now Demandant, by reason of the detaining her Dower thereof beyond the Value aforesaid, and besides her Costs and Charges by her laid out about her Suit in this Behalf, to two Pence, and for those Costs and Charges to 40 s. And if upon the whole Matter aforesaid in Form aforesaid found it shall seem to the Court here that the said *Ralph*, sometime the Husband, &c. neither on the Day when he married the said *Ann* the now Demandant, nor at any Time afterwards, was seised of the said 15 Messuages, two Gardens, 600 Acres of Land, 600 Acres of Meadow, 800 Acres of Pasture and 800 Acres of Moor with the Appurtenances, whereof, &c. of such his Estate so that the said *Ann* could be endowed thereof, then they the said Jurors say upon their said Oath that the said *Ralph*, sometime the Husband, &c. neither on the Day when he married the said *Ann* the now Demandant, nor at any Time afterwards, was seised of the said 15 Messuages, two Gardens, 600 Acres of Land, 600 Acres of Meadow, 800 Acres of Pasture and 800 Acres of Moor with the Appurtenances, whereof, &c. of such his Estate so that the said *Ann* could be endowed thereof. And because the Justices here will advise themselves of and

upon the Premises before they give Judgment thereupon, Day is given to the Parties aforesaid here until in eight Days of Saint Hilary to hear their Judgment thereof, for that the said Justices here are not thereupon yet, &c.

The King against The Mayor of Lincoln.

Reported in 1 Ld. Raym. 337. by the Name of The King and Morris.

WILLIAM the Third, by the Grace of God, of England, Scotland, France and Ireland King, Defender of the Faith, &c. To the Mayor and Sheriffs, Citizens and Commonalty of the City of Lincoln in our County of Lincoln, greeting: Whereas from Time whereof the Memory of Man is not to the contrary, there hath been had such a Custom within the said City, that every Person who should serve as an Apprentice within the City aforesaid in any Art or Mystery with any Freeman, or his Assigns, Freeman of the City aforesaid, for the Space of seven Years, might claim the Liberty and Privilege to be admitted into the Place and Office of one of the Freemen of the City aforesaid, &c. into the Freedom of the City aforesaid, and according to the Custom of that City to enjoy and use all the Liberties, Privileges, Pre-eminences and Commodities belonging and appertaining to a Freeman of the City aforesaid. And also whereas one *Abraham Morris* hath lately served as an Apprentice within the City aforesaid for the space of seven Years, in the Art or Mystery of a Mercer, with a Freeman of the City aforesaid, and his Assigns, Freemen of the City aforesaid, according to the Custom of the said City, and thereupon hath claimed the Liberty and Privilege to be admitted by you into the Place and Office of one of the Freemen of the City aforesaid, and into the Freedom of the said City to be admitted and hath offered himself to perform the Oath in that Case required by a solemn Affirmation or Declaration according to the Oath made and set forth in the Parliament holden in the 7th and 8th Years of the Reign of *William* the Third now King of England, &c. he the said *Abraham* being then and there one of the Dissenters commonly called Quakers: nevertheless you the said Mayor, &c. well knowing the Premises, have not admitted the said *Abraham Morris* into the aforesaid Place and Office of one of the Freemen, and into the Freedom of the City aforesaid, nor have permitted the aforesaid *Abraham Morris* to make a solemn Affirmation

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mation or Declaration according to the said Aſſ, instead of the Oath in that Case used, according to the Duty of your Office, but so to do you do unjustly refuse, in Contempt of us, and to the great Damage of him the said *Abrabam*, and to the manifest Grievance and Hurt of his Estate, as we have received Information by his Complaint: We therefore willing that due and speedy Justice in this Behalf be done to the said *Abrabam* as is right, command you and every of you, firmly enjoining that immediately after the Receipt of this Writ you admit the aforesaid *Abrabam Morris* to the Place and Office of one of the Freemen and to the Freedom of the City aforesaid, together with all Liberties, Privileges, Pre-eminencies and Commodities thereunto belonging, and permit the said *Abrabam Morris* to make the solemn Affirmation or Declaration aforesaid, instead of the Oath in that Case used; or signify to us Cause to the contrary, least through your Default Complaint be again made unto us, &c. Witness, &c.

The Return of the Writ.

The Execution of this Writ appears in a certain Schedule to this Writ annexed.

George Bracebridge, Mayor

The answer of the Mayor, Sheriffs, Citizens and Commonalty of the City of Lincoln to the Writ to this Schedule annexed, according to the Command of the said Writ.

We humbly certify to the Lord the King that the City of *Lincoln* aforesaid is not in the County of *Lincoln*, but in the County of the City of *Lincoln*, and that there hath, and from Time whereof the Memory of Man is to the contrary, there hath been had such a Custom within the City aforesaid, that every Person who hath served as an Apprentice within the City aforesaid in any Art or Mystery with any Freeman, or his Assigns Freemen of the City aforesaid for the Space of 7 Years, hath afterwards offered himself in the Common Council of the Mayor, Sheriffs, Citizens and Commonalty of the City aforesaid to perform the Oath in that Case used in these English Words following: You shall bear faithful Allegiance to our Sovereign Liege Lord the King, (naming the King then upon the Throne) and to his Heirs, Kings of *England*; and be meet and justifiable to the Mayor of this City that now is, and his Successors that hereafter shall be, all that now

for the common Profit of this City you shall do, and all Liberties and Franchises thereof you shall maintain: To your Power, all Ordinances and Customs made and to be made, you shall keep. You shall be levant and couchant to keep House or Chamber within this City, and all Manner of Charges and Offices laid to you for Commonweal, Worship or Profit of this City you shall bear, and be contributory to your Power. You shall have no Part of Merchandize with any Merchant Stranger to sell or colour by any Means, but you shall pay Toll for it. You shall colour none of infranchised Mens Goods, whereby the Sheriffalty or the Commonalty should lose their Right. You shall nothing do nor labour that shall be to the Prejudice, Derogation or Hindrance of the Commonweal or Profit of this City, but all Points and Articles, and what else belongs to be done by a Freeman of this City, you shall keep and maintain to your Power. So help you God. And not before, hath claimed the Liberty and Privilege to be admitted into the Place and Office of one of the Freemen of the City aforesaid and into the Freedom of the said City according to the Custom of that City, and to enjoy and use all the Liberties, Privileges, Pre-eminences and Commodities belonging and appertaining to a Freeman of the said City, and after the performing of the said Oath, and not before, ought to be admitted by the Common Council of the Mayor, Sheriffs, Citizens and Commonalty of the City aforesaid, one of the Freemen of the City aforesaid, and into the Freedom of the City aforesaid, according to the Custom of that City, and to enjoy and use all the Liberties, Privileges, Pre-eminencies and Commodities belonging and appertaining to a Freeman of the City aforesaid. And we further certify that the said *Abraham Mor-* lately, to wit, on the 10th Day of *February* in the eighth Year of the Reign of the Lord the now King hath served as an Apprentice within the City aforesaid for the Space of seven Years, in the Art or Mystery of a Mercer with a Freeman of the City aforesaid, according to the Custom of the said City; and afterwards on the said 10th Day of *February* in the same eighth Year of the Reign of the said Lord the now King thereupon at the Common Council of the Mayor, Sheriffs, Citizens and Commonalty of the said City then holden within the City, claimed to be admitted then and there by the Common Council aforesaid to the Liberty and Privilege into the Place and Office of one of the Freemen of the said City, and to the Freedom of the said City, and then and there offered himself,

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instead of the usual Form of Oath aforesaid, to make his solemn Affirmation or Declaration of the Words of the Oath aforesaid, according to the Act made and set forth in the Parliament holden in the seventh and eighth Years of the Reign of the said Lord the now King of *England, &c.* intituled, An Act that the solemn Affirmation and Declaration of the People called Quakers shall be accepted instead of an Oath in the usual Form, he the said *Abrabam* being then and yet one of the Dissenters commonly called Quakers; but the said *Abrabam* then and there refused to make the Oath in the usual Form aforesaid, according to the Custom of the said City. And we further certify to the said Lord the King, that the Office and Place of a Freeman of the City aforesaid is an Office and Place of Profit in the Government in the aforesaid Act mentioned; and that within the City aforesaid there is had, and from Time whereof the Memory of Man is not to the contrary there hath been had such a Custom, that every Freeman of the City aforesaid should have a Voice in the chusing two Citizens to serve for the said City in the Parliament of this Kingdom, whensoever the King should ordain a Parliament to be holden, and that every Freeman of the said City hath Common of Pasture in the Wastes lying within the City aforesaid for three Horses, or for three Cows or three Heifers, at all Times of the Year. And we further certify to the said Lord the King that the said *Abrabam Morris* never offered himself in the Common Council of the Mayor, Sheriffs, Citizens and Commonalty of the City aforesaid to take, nor ever hath taken the said Oath in the usual Form aforesaid; and for these Causes the said Mayor, Sheriffs, Citizens and Commonalty of the City aforesaid, have not admitted the said *Abrabam Morris* into the said Place and Office of one of the Freemen, and to the Freedom aforesaid, nor have permitted the said *Abrabam Morris* to make his solemn Affirmation or Declaration, according to the Act aforesaid, instead of the Oath in that Case used to be made, but refused so to do the said 10th Day of *February* in the said 8th Year of the Reign of the said Lord the now King.

George Bracebridge, Mayor.

Easter

after Term in the ninth Year of King William the Third.
Roll 367.

Asthill against Clarke. Ld. Raym. 341.

Coke.

Northamptonshire, (to wit) **WILLIAM** Clarke the Replevin for Younger and Robert taking a Sheep Varnbam were summoned to answer John Asthill, Gent. of in the High-Plea wherefore they took one Sheep of him the said John street at Daventree. and unjustly detained the same, against Gages and Pledges, &c. And whereupon the said John by Edmund Bromwich his Attorney complains, that the aforesaid William and Robert on the 14th Day of April in the 8th Year of the reign of the Lord the now King at Daventree, in a certain Place there called the Highstreet, took the Sheep aforesaid, and unjustly detained the same, against Gages and Pledges, until, &c. whereupon he says that he is injured, and hath Damage to the Value of ten Pounds; and thereupon he brings Suit, &c. Pledges to prosecute John Doe and Richard Roe.

And the said William and Robert by Thomas Pryor their Attorney come and defend the Force and Injury when, &c. as Bailiffs of the Earl of Nottingham; well acknowledge the taking of the Sheep aforesaid in the said Place in which, &c. and justly, &c. because they say that the said Place in which the taking of the Sheep aforesaid supposed to be done was the Soil and Freehold of him the said Daniel Earl of Nottingham; and because the Sheep aforesaid at the said Time when, &c. was in the said Place in which, &c. feeding on the Grass there then growing, and there doing Damage to the said Earl, they the said William and Robert, as Bailiffs of him the said Earl, and by his Command, at the said Time when, &c. well acknowledge the taking of the Sheep aforesaid in the said Place in which, &c. and justly, &c. so doing Damage there, &c.

And the said John Asthill saith, that the said William Bar to the Cognizance: Clarke the Younger and Robert Varnbam, for the Reason before alledged, as Bailiffs of the said Daniel Earl of Nottingham, ought not to acknowledge the taking of the said Sheep of him the said John in the Place aforesaid in which, &c. to be just, because he saith, that long before the said Earl of Nottingham had any Thing in the said Place in which, &c. the Lady Elizabeth, late Queen of England,

That Queen
Eliz. was sei-
sed in Fee in
Right of her
Dutchy of
Lancaster, and
granted two
Fairs, &c.

was seised in her Demesne as of Fee in Right of her Dut-
chy of *Lancaster* of and in the Manor of *Daventree* in the
said County of *Northampton* with the Appurtenances,
whereof the said Place in which, &c. then was Parcel; and
being so seised thereof, she the said Queen *Elizabeth* on the
26th Day of *March* in the 18th Year of her Reign, by
her Letters Patent sealed under her Great Seal of *England*,
bearing Date at *Westminster* the said 26th Day of *March* in
the 18th Year of her Reign abovesaid, of her special
Grace, for her Heirs and Successors, gave and granted to
the Bailiff, Burgesses and Commons of the Borough of *Da-
ventree* in the County of *Northampton*, and their Succes-
sors, that they and their Successors from thenceforth for
ever should have and hold, and should be able to have and
hold within the Borough aforesaid the Precincts and Liber-
ties thereof, two Fairs or Marts there to be holden and kept
yearly, that is to say, one Fair on *Tuesday* next after the
Feast of the *Passover*; and continually to last for two Days
from thence next following, and one other Fair upon the
Feast of Saint *Matthew* the Apostle, and continually to
last for two Days from thence next following, together
with a Court of Piepowder, and with all Profits and Com-
modities whatsoever forthcoming, happening, arising or
contingent from such Fairs or Marts, and with all Liber-
ties and free Customs to such Markets, Fairs or Marts be-
longing or appertaining, as by the Letters Patent aforesaid,
which the said *John* brings here into Court, sealed with
the Great Seal of *England*, more fully appears: By Vir-
tue of which said Grant the said Bailiff, Burgesses and
Commons of the Borough of *Daventree* aforesaid, and their
Successors, were seised and yet are seised as of Fee and
Right in Right of their Corporation aforesaid of and in
one Fair, yearly holden in the said Place in which, &c.
called the *Higb-street*, being within the Borough of *Da-
ventree* aforesaid, on *Tuesday* next after the Feast of the
Passover, and continually for two Days from thence next
following, and of and in one other Fair yearly there hold-
en on the Feast Day of Saint *Matthew* the Apostle, and
continually for two Days from thence next following, with
all Liberties and free Customs to such Fairs belonging:
And the said *John* further saith, that at the Fair holden
at the said Place in which, &c. within the said Borough
of *Daventree* aforesaid, on the said 14th Day of *April* in
the 8th Year of the Reign of the Lord the now King a-
bovesaid, being *Tuesday* next after the Feast of the *Passover*
last past, he the said *John* then and there in the said Place
in

in which, &c. called the *Higb-street* within the said Borough of *Daventre* aforesaid, in the full and open Fair there bought of a certain Person unknown the Sheep aforesaid, and then and there paid the customary Toll payable for all Things bought in that Fair to the aforesaid Bailiff, Burgeffes and Commons of the Borough of *Daventre* aforesaid, upon which the Sheep aforesaid, being then and there lawfully in the Custody of him the said *John*, they the said *William* and *Robert* then took that Sheep of him the said *John* in the said Place in which, &c. in the said Fair, and have unjustly detained it, in Manner and Form as the said *John* above complains against them; and this the said *John* is ready to verify: Wherefore since the said *William* and *Robert* have above acknowledged the taking of the Sheep aforesaid, he the said *John* prays Judgment and his Damages, by reason of the taking and unjustly detaining of the said Sheep, to be adjudged to him, &c.

And the aforesaid *William Clarke* and *Robert Varnham* say, Demurrer. that the Plea of the said *John Asbill* above pleaded in Bar of the Cognizance aforesaid is not sufficient in Law to preclude them the said *William* and *Robert* as Bailiffs of the aforesaid *Daniel Earl of Nottingham* from acknowledging the taking of the said Sheep in the Place aforesaid, in which, &c. to be just, and that they have no Necessity, nor are bound by the Law of the Land to answer to that Plea in Manner and Form aforesaid pleaded; and this they are ready to verify: Wherefore for want of a sufficient Plea of him the said *John*, they the said *William* and *Robert* pray Judgment, and a Return of the Sheep aforesaid, together with their Damages, &c. to be adjudged to them, &c.

And the said *John*, for that he hath above alledged sufficient Matter in Law for him the said *John* to have his said Action to be maintained against the said *William* and *Robert*, which said Matter the said *William* and *Robert* do not deny nor answer any Thing to the same, but wholly refuse to admit the said Averment, prays Judgment and his Damages, by reason of the taking and unjustly detaining of the said Sheep, to be adjudged to him, &c. And because the Justices here will advise themselves of and concerning the Premises before they give Judgment thereupon, Day is given to the Parties aforesaid here until the Morrow of the Holy Trinity, to hear their Judgment thereupon, for that the said Justices here are not thereof yet, &c.

Hilary

Hilary Term in the ninth Year of King William the Third.
Roll 321.

Beale and his Wife against Simpson. 1 Ld. Raym. 408.

Debt by Husband and Wife, Administratrix, for an Escape out of Execution. *Yorkshire*, (to wit) **WILLIAM Simpson** late of *Mansfield* in the County of *Nottingham*, Esq; Chief Bailiff of the Liberty of the Honour of *Pontefract* in the County of *York* aforesaid, was summoned to answer *Henry Beale*, Esq; and *Hannab* his Wife Administratrix of the Goods and Chattels which were of *John Stanhope*, Esq; with the Will to the Administration annexed, during the Minority of *Mary Stanhope* and *Hannab Stanhope* the Daughters and Residuary Legatees of the aforesaid *John Stanhope*, of a Plea that he render to them two hundred and three Pounds and ten Shillings, which he unjustly detains from them, &c. and whereupon the said *Henry* and *Hannab* by *Laurence Breres* their Attorney say, that whereas they the said *Henry* and *Hannab* his Wife heretofore, that is to say, in the Term of the Holy Trinity in the eighth Year of the Reign of the Lord the now King, before *George Treby*, Knt. and his Companions, then Justices of him the said Lord the King of the Bench here, to wit, at *Westminster*, by the Consideration of the same Court, recovered by the Name of *Henry Beale*, Esq; and *Hannab* his Wife Administratrix of the Goods and Chattels which were of *John Stanhope*, Esq; with the Will to the Administration annexed, during the Minority of *Mary Stanhope* and *Hannab Stanhope* the Daughters and Residuary Legatees of the aforesaid *John*, against one *Richard Dickins*, Gent. then and yet one of the Attornies of the said Court of the Lord the King of the Bench, otherwise called *Richard Dickins* of *Leeds* in the County of *York*, Gent. upon a certain Writing obligatory by the aforesaid *Richard* to the aforesaid *John Stanhope* in his Life-time at *Leeds* aforesaid made, sealed and delivered, as well a certain Debt of 200*l.* as seventy Shillings, which to the same *Henry* and *Hannab* his Wife in the same Court of the said Lord the King of the Bench aforesaid here were adjudged for their Damages which they had sustained, by occasion of the detaining of that Debt whereof he was convicted, as by the Record and Process thereof in the said Court of the said Lord the King of the Bench aforesaid here, to wit, at *Westminster* aforesaid remaining, manifestly appears. And also whereas they the said *Henry* and *Hannab* his Wife, for the obtaining Execution

Declaration.

The Judgment in Com.
B. Trin. 8 W.
3

Capias ad satisfac.

ecution

ecution of the Judgment aforesaid afterwards in the same
 Term of the Holy *Trinity* prosecuted out of the said
 Court of the said Lord the King of the Bench aforesaid
 here a certain Writ of him the said Lord the King of
Capias ad satisfaciendum, of and upon the Judgment
 aforesaid, against the aforesaid *Richard*, directed to the
 then Sheriff of the County of *York* aforesaid; by which
 said Writ the said Lord the now King commanded the
 same then Sheriff that he should take the aforesaid *Rich-*
ard, if, &c. and him safely, &c. so that he might have
 his Body before the Justices of the said Lord the King
 here, to wit, at *Westminster* aforesaid, on *Saturday* next af-
 ter fifteen Days of *Saint Martin* then next following, to sa-
 tisfy to them the said *Henry* and *Hannab* his Wife of the
 Debt and Damages aforesaid in Form aforesaid recovered;
 by Virtue of which said Writ *John Bradshaw*, Esq; then
 being Sheriff of the County of *York* aforesaid afterwards,
 to wit, on the first Day of *August* in the 8th Year above-
 said at *Leeds* aforesaid, made and directed his certain War-
 rant in Writing, sealed with the Seal of his Office of Sher-
 riff of the County of *York* aforesaid, to the Chief Bailiff
 of the Liberty of the Honour of *Pontefract* in the County
 of *York* aforesaid directed, which said Chief Bailiff then
 had and yet hath the full Execution and Return of all
 Writs, Precepts and Warrants within the same Liberty,
 and unto whom the Execution of the Writ aforesaid whol-
 ly belonged to be done, so that Execution thereof out of
 the same Liberty he might not cause to be done; by which
 said Warrant the said *John Bradshaw* commanded the Chief
 Bailiff of the Liberty of the Honour of *Pontefract* afore-
 said, that the same Bailiff should take the said *Richard* if,
 &c. and him safely, &c. so that the aforesaid *John Brad-*
shaw might have the Body of the aforesaid *Richard* before
 the said Justices of the said Lord the King here, to wit, at
Westminster aforesaid, on the aforesaid *Saturday* next after
 the said fifteen Days of *Saint Martin*, to satisfy to them
 the said *Henry* and *Hannab* his Wife of the Debt and Da-
 mages aforesaid, by Virtue of which said Warrant the a-
 foresaid *William Simpson* afterwards and before the Return
 of the Writ and Warrant aforesaid, to wit, on the first
 Day of *November* in the 8th Year of the Reign of the said
 Lord the now King aforesaid, (the same *William* then be-
 ing the Chief Bailiff of the aforesaid Liberty of the Ho-
 nour of *Pontefract* aforesaid) at *Leeds* aforesaid, (which said
 Town of *Leeds* is within the Liberty aforesaid) took and
 arrested

Return there-
 of.
 thereupon of
 the Sheriff of
Yorkshire to
 the Bailiff of
Pontefract
 Liberty.
 The Executi-
 on executed
 by the Defen-
 dant the Bailiff
 of *Pontefract*.

PLEADINGS TO THE CASES.

The Escape.

Commission of
Letters of
Administra-
on.

arrested the aforesaid *Richard*, and then and there had and detained the aforesaid *Richard* in his Custody in Execution for the Debt and Damages aforesaid, by Virtue of the Warrant aforesaid; and the aforesaid *Richard* being so in Prison under the Custody of the aforesaid *William*, in Execution for the Debt and Damages aforesaid, as before is set forth, the aforesaid *William* afterwards, to wit, on the 3d Day of *February* in the 8th Year aforesaid (the aforesaid *William* being then and yet the Chief Bailiff of the Liberty of the Honour of *Pontefract* aforesaid) suffered the aforesaid *Richard* to escape out of his Custody at *Leeds* aforesaid, and freely to go at large where he would, without the Command of them the said *Henry* and *Hannab* his Wife, or of either of them, and without their Licence, and against the Will of them the said *Henry* and *Hannab* his Wife (they the said *Henry* and *Hannab* his Wife, or either of them, not being then and there satisfied of, or paid the Debt and Damages aforesaid so recovered, as before is set forth), by which an Action hath accrued to them the said *Henry* and *Hannab* his Wife, to require and have of the aforesaid *William* the said two hundred and three Pounds and ten Shillings: Nevertheless the aforesaid *William*, although often requested, the said 203*l.* and 10*s.* to the said *Henry* and *Hannab* his Wife (to whom Administration with the Will annexed of all the Goods and Chattels which were of the aforesaid *John Stanhope* at the Time of his Death during the Minority of the aforesaid *Mary* and *Hannab Stanhope*, the Daughters and Residuary Legatees of the aforesaid *John Stanhope*, who are now in being in full Life, and are yet within Age, by *John*, by Divine Providence Archbishop of *York*, Primate of *England* and Metropolitan, on the 29th Day of *June* in the 5th Year of the Reign of the said Lord the now King and Lady *Mary* the Second, late Queen of *England*, &c. at *Leeds* aforesaid, after the Death of the said *John Stanhope* was lawfully committed) nor to either of them hath rendered, but to render the same to them, or to either of them, hath hitherto wholly denied, and yet doth deny, and unjustly detains the same, whereupon they the said *Henry* and *Hannab* his Wife say, that they are injured, and have sustained Damage to the Value of 40*l.* and thereupon they bring Suit, &c. And they bring here into Court the Letters of Administration with the Will annexed of the aforesaid Archbishop, which testify the Commission of the Administration aforesaid in Form aforesaid, &c.

And

And the aforesaid *William Simpson* by *Henry Wood* his Bar, that be-
 Attorney comes and defends the Force and Injury when, forethe Escape
 &c. and saith that the said *Henry* and *Hannab* ought not to an *Ha. Cor.*
 have their said Action thereof against him, because he issued,
 saith, that before the aforesaid Time when the aforesaid
 Escape of the aforesaid *Richard Dickins*, or the Permission
 of his going out of the Custody of him the said *William* is
 supposed to be done, to wit, on the 23d Day of *January* in
 the 8th Year of the Reign of the Lord the now King a-
 bovesaid, a certain Writ of him the said Lord the King of
Habeas Corpus, issued out of the Court of the same Lord
 the King of the Bench here, to wit, at *Westminster* in the
 County of *Middlesex*, directed to the Bailiff of the Liber-
 ty of the Honour of *Pontefract* aforesaid, by which said
 Writ the said Lord the King commanded the said Bailiff of
 the Liberty aforesaid, that he should have the Body of the
 aforesaid *Richard Dickins* detained in the Prison of the said
 Lord the King, under the Custody of the aforesaid Bailiff,
 together with the Day and Cause of his Caption and De-
 tention, by whatsoever Name the same *Richard* should
 be named in the same, before the Justices of him the said
 Lord the King here, to wit, at *Westminster* aforesaid, on
Saturday next after the Purification of the Blessed *Mary* returnable
 then next following, to do and receive that which the same *Cro. Pur.*
 Court here should then and there consider concerning him
 in that Behalf, and that the same Bailiff should have there
 then that Writ; which Writ afterwards and before the a- Delivery of
 foresaid Time when the Escape aforesaid is supposed to that Writ to
 have been suffered, to wit, on the 27th Day of *January* Defendant.
 in the 8th Year abovesaid at *Leeds* aforesaid to the aforesaid
William (being then and yet Bailiff of the Liberty aforesaid)
 was delivered to be executed in due Form of Law; by
 Virtue of which said Writ the said *William* afterwards
 and before the Return thereof, to wit, on the said third
 Day of *February* in the 8th Year abovesaid at *Leeds* aforesaid,
 took the Body of the aforesaid *Richard* out of the Pri-
 son and Gaol of the said Lord the King of the Liberty a-
 foresaid, and carried the same under the Custody of him
 the said *William* from the Prison aforesaid by the common
 and nearest Way unto *Westminster* aforesaid, and in Court
 here at the Return of the said Writ had the same, accord-
 ing to the Command of the same Writ, and to the same
 Court here in a certain Schedule to the same Writ annexed
 hath returned the Day and Cause of the Caption and De-
 tention of him the said *Richard* in the Form following,
 that is to say, That before the coming of that Writ the The Return.
 said thereof.

PLEADINGS TO THE CASES.

Commitment
to the *Fleet*.

Which is the
same Escape,
&c.

Replication
Proteslando as
to the said *Ha.*
Cor. and re-
plies a diffe-
rent *Ha. Cor.*

issued out the
28th *Novem.*

said *Richard* was taken within the Liberty aforesaid, and was detained in the Prison of the said Lord the King, under the Custody of him the said *William*, by Virtue of the said Warrant in the Declaration aforesaid mentioned for the Debt and Damages aforesaid specified in that Declaration, and that that was the only Cause of the Caption and Detention of the aforesaid *Richard* in the Prison and Custody aforesaid, which together with the Body of him the said *Richard*, at the Day and Place in the said Writ of *Habeas Corpus* mentioned, according to the Command of that Writ he had ready, and thereupon the said *Richard* then, to wit, at the said Day of the Return of the same Writ by the same Court here was committed to the Prison of the said Lord the King of the *Fleet* on the Occasion aforesaid, there to remain until, &c. as by the Record of that Writ and the said Return thereof, and the Commitment aforesaid in the Court here remaining, more fully appears; which said taking of the said *Richard* out of the said Prison and Gaol aforesaid, and carrying of the said *Richard* from that Prison unto *Westminster* aforesaid, done for the Cause aforesaid, is the same Escape, and suffering of the said *Richard* to escape and go at large out of the Custody of him the said *William*, whereof the said *Henry* and *Hannab* themselves now above complain; and this he is ready to verify: Wherefore he prays Judgment if the said *Henry* and *Hannab* ought to have their said Action thereof against him, &c.

And the aforesaid *Henry* and *Hannab* his Wife protesting, that the said Writ of *Habeas Corpus* in the said Plea of the said *William* above mentioned was not delivered to the said *William* before the said Time the said Escape in the said Declaration of them the said *Henry* and *Hannab* above mentioned was suffered, as the said *William* in his said Plea hath alledged: Nevertheless for Replication to the said Plea of the said *William* they say, that by any Thing by the said *William* above alledged they ought not to be barred from having their said Action against the said *William*, because they say, that on the 28th Day of *November* in the 8th Year of the Reign of the said Lord the now King aforesaid, a certain Writ of him the said Lord the King of *Habeas Corpus*, issued out of the said Court of the said Lord the King of the Bench aforesaid here, to wit, at *Westminster* aforesaid, to the Bailiff of the Liberty of the Honour of *Pontefract* aforesaid directed; by which said Writ the said Lord the now King commanded the said Bailiff of the Liberty of the Honour of *Pontefract* aforesaid, that he should have

have the Body of the said *Richard Dickins*, by whatsoever Name he should be named in the Prison of the said Lord the now King, under the Custody of the said Bailiff of the Liberty aforesaid, together with the Day of the Caption and Detention of the said *Richard*, before the Justices of the said Lord the King here, to wit, at *Westminster* aforesaid on *Saturday* next after eight Days of Saint *Hilary* then next following (being the 23d Day of *January* in the 8th Year of the Reign of the said Lord the now King aforesaid) that they the said Justices of the said Lord the King of the Bench here aforesaid having seen the Cause, might be able to do in that Behalf that which was of Right to be done, according to the Law and Custom of the Kingdom of *England*; and that the same Bailiff should then have there that Writ; which said Writ afterwards and before the Return thereof, to wit, on the ninth Day of *December* in the 8th Year aforesaid at *Leeds* aforesaid, was delivered to the aforesaid *William*, then being Bailiff of the Liberty aforesaid to be executed in Form of Law, but the aforesaid *William* at or before the Return of the said Writ did nothing thereupon, but by Colour and Pretence of that Writ after the Return thereof, to wit, on the said 3d Day of *February* in the 8th Year aforesaid at *Leeds* aforesaid, without any other Writ, Precept or Authority, and against the Will of them the said *Henry* and *Hannab* his Wife, took the Body of the aforesaid *Richard* out of the said Prison and Gaol of the said Lord the King of the Liberty aforesaid, and the same to *Westminster* aforesaid, under the Custody of the aforesaid *William* afterwards to wit, on the 6th Day of *February* in the 8th Year aforesaid brought and there had; and the aforesaid *Richard* being there, afterwards to wit, the same 6th Day of *February* in the 8th Year aforesaid, by Fraud and Covin between him the said *William*, and other Persons to them the said *Henry* and *Hannab* his Wife unknown, the said Writ of *Habeas Corpus* in the said Plea of the said *William* above specified was sued forth out of the said Court of the Bench aforesaid here, and delivered to him the said *William*, and not before; by which said Writ the said Lord the King also commanded the said Bailiff of the Liberty aforesaid in Manner and Form as the said *William* by his said Plea hath above alledged; by Virtue of which said Writ of *Habeas Corpus* last mentioned, the said *William*, the Body of the aforesaid *Richard* afterwards, to wit the same 6th Day of *February*, being the said *Saturday* next after the Purification of the Blessed *Mary*, *February*.

Returnable
O^oab. Hil.
which was delivered to Defendant 9th of Dec.
That after the Return of it on 3d of Feb. he took Defendant in the Judgment by Colour. &c. and brought him to *Westminster*. the 6th of Feb. And the same Day by Fraud, &c. the *Ha. Cor.* in the Plea was sued forth and delivered to Defendant and not before.
That by Virtue of the last *Ha. Cor.* Defendant in the Judgment was brought to *Westminster* said 6th of *Mary*, *February*.

PLEADINGS TO THE CASES.

and was
thereupon
committed to
the Fleet.

Traverse.

Special De-
murrer.

Cause.

Joinder in De-
murrer.

Mary, brought into the said Court of the said Lord the King of the Bench here, and in the same Court then and there had, and to the said Court here in a certain Schedule to the same Writ of *Habeas Corpus* last mentioned annexed returned the Day and Cause of the Caption and Detention of the aforesaid *William* in the Form as the aforesaid *William* by his Plea aforesaid hath above pleaded; and thereupon the said *Richard* afterwards, to wit, the said 6th Day of *February* in the 8th Year aforesaid, being the Day of the Return of the said Writ of *Habeas Corpus* last mentioned, was committed by the said Court of the said Lord the King of the Bench aforesaid here to the said Prison of the said Lord the King of the Fleet, on the occasion aforesaid, there to remain until, &c. as the aforesaid *William* hath above alledged; without this that the said *William* by Virtue of the said Writ of *Habeas Corpus* in the said Plea of him the said *William* mentioned, took the Body of the aforesaid *Richard* out of the said Prison and Gaol of the said Lord the King of the Liberty aforesaid, and carried the same from the Prison aforesaid to *Westminster*, as the aforesaid *William* by his said Plea hath also above alledged; and this they the said *Henry* and *Hannah* his Wife are ready to verify: Whereupon they pray Judgment and their said Debt, together with their Damages by occasion of the Detention of that Debt, to be adjudged to them &c.

And the aforesaid *William* saith, that the said Plea of them the said *Henry* and *Hannah* above pleaded in reply, and the Matter in the same contained, are not sufficient in Law for them the said *Henry* and *Hannah* to have their said Action to be maintained against him the said *William*; and that he to that Plea in Manner and Form aforesaid pleaded hath no Necessity, nor is bound by the Law of the Land to answer; and this he is ready to verify: Wherefore for want of a sufficient Plea of them the said *Henry* and *Hannah* in this Behalf the said *William* prays Judgment, and that the said *Henry* and *Hannah* may be barred from having their said Action against him the said *William*, &c. And for Cause of this Demurrer in Law the said *William* sheweth to the Court here, and saith, that the Traverse aforesaid is repugnant, and traverseth Matter not traversable, &c.

And the aforesaid *Henry* and *Hannah* protesting that the said Traverse in their Replication above contained is not repugnant but good and sufficient in Law; and that they the said *Henry* and *Hannah* have traversed Matter traversable, say, that they have above alledged in Reply sufficient

Matter

Matter in Law for them the said *Henry* and *Hannab* to have their said Action to be maintained against the aforesaid *William Simpson*, which they are ready to verify; which said Matter the said *William* doth not deny, nor in any Way answereth to the same, but hath wholly refused to admit that Averment, wherefore as before they the said *Henry* and *Hannab* pray Judgment and their Debt aforesaid, together with their Damages, by occasion of the Detention of that Debt, to be adjudged to them, &c.

Michaelmas, the 10th of William the Third. Plea. Roll
255.

Mosley against Coldwell. 1 Ld. Raym. 430.

Yorkshire, (to wit) **R**ICHARD Mosley, the Son and Formedon in
Heir of Richard Mosley deceased, Descender
by William Radcliff his Attorney demands against Thomas upon a Cove-
Coldwell two Messuages, twenty Acres of Land, twenty Acres of Meadow, and twenty Acres of Pasture, with the Appurtenances in Shelley, of which John Mosley the Grandfather of the aforesaid Richard the Son, was seised in his Demesne as of Fee; and by a certain Indenture made between him the said John and Joseph Lockwood and John Clay, covenanted and granted with them the said Joseph and John Clay, that he the said John the Grandfather and his Heirs should stand and be seised of the Tenements aforesaid with the Appurtenances, to the use of Richard Mosley the Son and Heir of the said John the Grandfather and the Heirs Males of his Body lawfully begotten or to be begotten; and that after the Death of the said Richard the Son and Heir of the said John the Grandfather, they ought to descend to the aforesaid Richard the Son and Heir of the said Richard, by Form of the Covenant and Grant aforesaid, and by Force of the Statute, &c. and whereupon he saith that the said John Mosley, the Grandfather of the said Richard, on the 18th Day of October in the tenth Year of the Reign of Charles the First late King of England, &c. was seised of and in the Tenements aforesaid with the Appurtenances in his Demesne as of Fee; and being so seised thereof, he the said John Mosley afterwards, to wit, the same 18th Day of October in the tenth Year aforesaid, by a certain Indenture made between him the said John Mosley of the one Part, and the said John Lockwood and John Clay of the other Part, at Shelley aforesaid, and here brought into Court, for and in Consideration of the intire Love and Affection which he the said

Q

John

PLEADINGS TO THE CASES.

John the Grandfather bore towards the aforesaid *Richard* the Son and Heir apparent, and that the Tenements aforesaid should continue and remain in the Blood and Name of the aforesaid *John* the Grandfather as long as God should permit the same, covenanted and granted with them the said *Joseph Lockwood* and *John Clay*, their Executors and Administrators, that he the said *John* the Grandfather and his Heirs, and all other Person and Persons who then were or at any Time afterwards should and might be seised of the Tenements aforesaid with the Appurtenances, should stand and be seised thereof to the Use of *Richard Mosley* his Son and Heir apparent, and the Heirs Males of his Body lawfully begotten or to be begotten by Virtue whereof and by Force of the Statute made in the Parliament of *Henry* the 8th late King of *England*, and holden at *Westminster* in the County of *Middlesex* the fourth Day of *February* in the 27th Year of his Reign, of transferring Uses into Possession, the said *Richard Mosley* the Son of the said *John* was seised of the Tenements aforesaid with the Appurtenances in his Demesne as of Fee and Right, according to the Form of the Covenant and Grant aforesaid, &c. in the Time of Peace in the Time of Lord *Charles* the Second late King of *England*, &c. within twenty Years now last past, by taking the Profits thereof to the Value, &c. and from him the said *Richard* the Son of the said *John Mosley* the Right descends, by Form, &c. to him the said *Richard*, who demands the Right as Son and Heir of the said *Richard* his Father, and which after his Death, &c. and thereupon he brings Suit, &c.

Non-tenure
as to Part,

And the aforesaid *Thomas* by *Henry Hemingway* his Attorney comes, and as to one Messuage, ten Acres of Land, fifteen Acres of Meadow and fifteen Acres of Pasture with the Appurtenances, Parcel of the Tenements aforesaid with the Appurtenances above demanded, saith, that he cannot render the same Tenements, Parcel, &c. to the aforesaid *Richard* the now Demandant, because he saith that he is not Tenant of the same one Messuage, ten Acres of Land, fifteen Acres of Meadow and fifteen Acres of Pasture with the Appurtenances, or of any Parcel thereof, as of Freehold, neither was he so on the Day of obtaining of the original Writ of the said *Richard*, nor at any Time afterwards, but one *John Downes* is, and on the Day of obtaining that Writ was thereof Tenant as of Freehold; and this he is ready to verify: Whereupon as to the same Tenements, Parcel, &c. with the Appurtenances he the said

and shews
who is the
Tenant of
that Part.

Thomas

Thomas prays Judgment of the Writ, &c. And as to one Messuage, ten Acres of Land, five Acres of Meadow and five Acres of Pasture with the Appurtenances, Residue of the Tenements aforesaid above demanded, he the said *Thomas* defends his Right when, &c. and saith that the said *Richard* the now Demandant, after the Death of the said *Richard* his Father, into the same Tenements the Residue with the Appurtenances entered, as into Lands to him in Form aforesaid descending, and was thereof seised; and this he is ready to verify: Whereupon as to the same Tenements with the Appurtenances the Residue, &c. he the said *Thomas* also prays Judgment of the Writ aforesaid, &c.

And the said *Richard Mosley*, as to the said Plea of the said *Thomas* as to the said one Messuage, ten Acres of Land, five Acres of Meadow and 15 Acres of Pasture, Parcel of the Tenements aforesaid with the Appurtenances, above demanded above pleaded in Abatement of the said Writ, saith, that that Writ for the Reason above alledged ought not to be abated, because he saith, that on the Day of obtaining the said original Writ of him the said *Richard Mosley*, that is to say, on the 18th Day of February in the ninth Year of the Reign of the Lord the now King, the aforesaid *Thomas* was Tenant of those Tenements with the Appurtenances as of Freehold, as by the Writ aforesaid is supposed; and he prays that this may be inquired of by the Country, and the aforesaid *Thomas* likewise, &c. And as to the said Plea of the said *Thomas* as to the said one Messuage, ten Acres of Land, five Acres of Meadow and five Acres of Pasture with the Appurtenances above pleaded, the said *Richard* saith, that by any Thing in that Behalf above pleaded his said Writ ought not to be abated, because he saith, that the said Plea by him the said *Thomas* above pleaded in that Behalf, and the Matter in the same contained, are not sufficient in Law to abate the said Writ in that Part to which the said *Richard* hath no Necessity, he is bound by the Law of the Land in any Manner to answer; and this he is ready to verify: Wherefore for want of a sufficient Answer in this Behalf, he the said *Richard* prays Judgment, and that his said Writ in that Part may be adjudged good, and that the aforesaid *Thomas* may answer to the Writ in that Part, &c.

Replication to the Non-tenure that the Tenant was Tenant, and issue.

To the Residue Demandant Demurs.

Joinder in Demurrer.

Trinity, the 9th of King William the Third. Roll 302.

Kinsey against Hayward. 1 Ld. Raym. 432.

Assumpsit by an Administrator against an Executor. London, (to wit) **H**ENRY Hayward late of Southwark in the County of Surry, Carpenter, Executor of the last Will and Testament of *John Hayward* deceased, was attached to answer *Mary Kinsey* Widow, Administrator of the Goods and Chattles which were of *Thomas Kinsey*, Knt. her late Husband, who died intestate, &c. of a Plea of Trespass upon the Case, &c. And whereupon the said *Mary* by *Francis Jackson* her Attorney complains, that whereas the aforesaid *John* in his Life-time, to wit, on the fifth Day of *August* in the Year of our Lord 1682, at *London* in the Parish of the Blessed *Mary* of the Arches in the Ward of *Cheape*, was indebted to the said *Thomas* in his Life-time in 50 *l.* of lawful Money of *England*, for Monies by him the said *Thomas* in his Life-time before that Time advanced and lent to the said *John*; and being thereof so indebted, he the said *John* in Consideration thereof afterwards, to wit, the same fifth Day of *August* in the Year of our Lord 1682, at *London* aforesaid in the Parish and Ward aforesaid, assumed upon himself, and to the said *Thomas* in his Life-time then and there faithfully promised that he the said *John* the said 50 *l.* to him the said *Thomas*, when he should be thereunto afterwards requested, would well and faithfully pay and content. And also whereas the aforesaid *John* in his Life-time afterwards, to wit, the fourth Day of *February* in the Year of our Lord 1692, at *London* aforesaid in the Parish and Ward aforesaid, accounted together with the aforesaid *Thomas* in his Life-time of and concerning divers other Sums of Money by the aforesaid *John* before that Time owing and payable for divers Sums of Money by the said *John* of the said *Thomas* before that Time borrowed, had and received, and then being unpaid; and upon that Account he the said *John* was then and there found in Arrear towards him the said *Thomas* in other 50 *l.* of the like lawful Money of *England*; and being thereupon so found in Arrear, the aforesaid *John* in Consideration thereof afterwards, to wit, the same fourth Day of *February* in the Year of our Lord 1692 aforesaid, at *London* aforesaid in the Parish and Ward aforesaid, assumed upon himself, and to the said *Thomas* then and there faithfully promised that he the said *John* the said 50 *l.* last mentioned to him the said *Thomas*, when he should

Money lent.

Upon an Account stated.

be thereunto afterwards requested, would well and faithfully pay and content : Nevertheless the aforesaid *John* in his Life-time, and the said *Henry* after the Death of him the said *John*, the aforesaid several Promises and Undertakings of the aforesaid *John* in his Life-time in Form aforesaid made, not at all regarding, but contriving and fraudulently intending him the said *Thomas* in his Life-time, and the aforesaid *Mary* after the Death of him the said *Thomas* in this Behalf craftily and subtilly to deceive and defraud, the aforesaid several Sums of Money, or any Part thereof, to him the said *Thomas* in his Life-time, or to the aforesaid *Mary* after the Death of him the said *Thomas* (to which said *Mary* after the Death of him the said *Thomas*, Administration of all the Goods and Chattels which were of the said *Thomas* at the Time of his Death, by *Thomas* by Divine Providence Archbishop of *Canterbury* Primate of all *England* and Metropolitan, to whom in that Behalf it belonged to commit Administration, on the 13th Day of *February* in the Year of our Lord 1696, at *London* aforesaid in the Parish and Ward aforesaid, was committed in due Form of Law) have not paid or contented, nor hath either of them paid, or in any Manner for the same contented, (although to do this the aforesaid *John* in his Life-time, and the said *Henry* after the Death of him the said *John* by the said *Thomas* in his Life-time, and after the Death of the said *Thomas* the said *Henry* by her the said *Mary* afterwards, to wit, on the 29th Day of *April* in the Year of our Lord 1697, and often afterwards, at *London* aforesaid in the Parish and Ward aforesaid, have been requested) but the said *John* in his Life-time, and the said *Henry* after the Death of him the said *John*, the aforesaid several Sums of Money, or any Part thereof, to him the said *Thomas* in his Life-time have wholly refused to pay, and the said *Henry* to pay the same to the said *Mary* after the Death of the said *Thomas*, or in any Manner to content her for the same yet wholly refuses, to the Damage of her the said *Mary* of 100 *l.* and in delay of the Execution of the Administration of the Goods and Chattels aforesaid ; and thereupon she brings Suit, &c. And she brings here into Court the Letters of Administration of the said Archbishop, which testify the Commission of the Administration aforesaid to the said *Mary* in Form aforesaid, &c.

Letters of
Adminittra-
tion granted,

And the aforesaid *Henry* by *Culverwell Needler* his At-Bar, *Non ass-
torney* comes and defends the Force and Injury when, &c. *sumpsit infra*
and saith that the said *Mary* ought not to have her said Ac-*sex annos.*

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tion thereof against him, because he saith, that the said *John* in his Life-time, at any Time within six Years next before the Day of obtaining the original Writ of her the said *Mary*, did not assume upon himself in Manner and Form as the aforesaid *Mary* above complains against him; and this he is ready to verify: Whereupon he prays Judgment if the said *Mary* ought to have her said Action thereof against him, &c.

Replication,
that the In-
testate within
6 Years sued
forth an Ori-
ginal.

in Trespas
*Quare clau-
sum fregit* a-
gainst Testa-
tor,

with an Inten-
tion to declare
for the Cause
in the present
Declaration.

And the aforesaid *Mary* saith that she, by any Thing by the said *Henry* above pleaded, ought not to be barred from having her said Action against him, because she saith that the aforesaid *Thomas* in his Life-time, by the Name of *Thomas Kinsey*, Knt. and within six Years after the Cause of Action aforesaid above specified accrued, to wit, on the 8th Day of *May* in the 4th Year of the Reign of the Lord *James* the Second late King of *England*, &c. for the Recovery of his Damages by occasion of the Non-performance of the several Promises and Undertakings in the Declaration aforesaid in Form aforesaid above mentioned, sued forth out of the Court of Chancery of the said late King (the same Court being then at *Westminster* in the County of *Middlesex*) a certain original Writ of the said late King of a certain Plea of Trespas against the aforesaid *John*, by the Name of *John Hayward* late of *Southwark* in the County of *Surry* Carpenter, directed to the then Sheriff of the County of *Dorset*, by which said Writ the said late King commanded the said then late Sheriff of the County of *Dorset*, that if the said *Thomas* should make him secure of prosecuting his Claim, then he should put by Gages and safe Pledges the aforesaid *John*, that he should be before the then Justices of the said late King on the Morrow of the Ascension of our Lord then next following, to shew wherefore with Force and Arms the Close of him the said *Thomas* at *Beamister* he had broken, and other Wrongs to him had done, to the great Damage of him the said *Thomas*, and against the Peace of the said late King, and that he should have there the Names of the Pledges and that Writ; which said Writ he the said *Thomas* sued forth against the said *John*, with an Intention that upon the Appearance of him the said *John* to the said Writ of him the said *Thomas*, he the said *Thomas*, according to the Custom of the Court of the Bench here from Time whereof the Memory of Man is not to the contrary used and approved in the same, would declare thereupon against the aforesaid *John* for the Cause aforesaid mention-

ed

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ed in the Declaration of her the said *Mary*, but he the said *John* did not appear, but afterwards, to wit, the first Day of *April* in the Year of our Lord 1693, at *London* aforesaid in the Parish and Ward aforesaid died, upon which the aforesaid *Thomas* recently, to wit, on the twelfth Day of *April* in the 5th Year of the Reign of the Lord the now King and of Lady *Mary* the late Queen, for the Recovery of his Damages by occasion of the Non-performance of the several Promises and Undertakings in the Declaration in Form aforesaid above mentioned, sued forth out of the Court of Chancery of the said Lord the now King and Lady the late Queen (the said Court being then at *Westminster* in the County of *Middlesex*) a certain other original Writ of the said Lord the now King and Lady the late Queen of a Plea of Trespass against the aforesaid *Henry*, by the Name of *Henry Hayward* late of *Southwark* in the County of *Surrey*, directed to the then Sheriff of the County of *Dorset*; by which said Writ the said Lord the now King and Lady *Mary* the late Queen then commanded the Sheriff of the County of *Dorset*, that if the said *Thomas* should make him secure of prosecuting his Claim, then he should put by Gages and safe Pledges the aforesaid *Henry*, that he should be before the then Justices of the said Lord the now King and Lady *Mary* the late Queen from *Easter* Day in fifteen Days then next following, to shew wherefore with Force and Arms the Close of him the said *Thomas* at *Beamister* he had broken, and other Wrongs to him had done, to the great Damage of him the said *Thomas*, and against the Peace of the said Lord the now King and of the late Queen, and that he should have there the Names of the Pledges, and that Writ; which said Writ he the said *Thomas* sued forth against the said *Henry*, with an Intention that upon the Appearance of him the said *Henry* to the said Writ of him the said *Thomas*, he the said *Thomas*, according to the Custom of the Court of the Bench here, from Time whereof the Memory of Man is not to the contrary, used and approved in the same, would declare thereupon against the said *Henry* as Executor of the Will of the aforesaid *John* for the Cause aforesaid in the Declaration of her the said *Mary* mentioned; but he the said *Henry* did not appear, and the aforesaid *Thomas* afterwards, to wit, on the fifth Day of *February* in the 8th Year of the Reign of the Lord the now King, at *London* aforesaid in the Parish and Ward aforesaid died, and thereupon the Administration aforesaid was committed to her the said *Mary* the Day Year and Place, and in the Manner and

That the Defendant did not appear, but died.

Another Writ in Trespas,

to the same Intent as before.

That the Defendant did not appear, and the Intestate of Plaintiff died.

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An Original
for the Plain-
tiff in Case,

to which the
Defendant
hath appear-
ed,

and thereup-
on the Plain-
tiff has de-
clared as a-
bove.

Averments,

Form in the Declaration of her the said *Mary* above speci-
fied; upon which the said *Mary* recently, to wit, on the
29th Day of *April* in the ninth Year of the Reign of the
Lord the now King, sued forth out of the Court of
Chancery of the said Lord the now King, the same Court
being then at *Westminster* aforesaid in the County of
Middlesex aforesaid, the original Writ of him the said Lord
the now King in the said Plea of *Trespass* upon the Case,
returnable in the Court of the Lord the King of the Bench
here on the Morrow of the Ascension of our Lord, in the
ninth Year of the Reign of the Lord the now King, to
which said original Writ of her the said *Mary* the afore-
said *Henry* in the Term of *Easter* last past appeared by
Culverwell Needler his Attorney in the said Court of the
Lord the King of the Bench here, and thereupon she the
said *Mary* in the said Term of *Easter* last past hath declared
against the aforesaid *Henry* of the Plea aforesaid in Manner
and Form aforesaid; and the aforesaid *Mary* saith, that
the said *Thomas* sued forth the said original Writ of him
the said *Thomas* against the said *John* with an Intention that
upon the Appearance of him the said *John* to the said Writ
of him the said *Thomas* he the said *Thomas* would declare
thereupon against the said *John* for the Cause aforesaid in
the Declaration of her the said *Mary* mentioned, according
to the Custom of the said Court of the Bench here, and
that the Cause of Action aforesaid first accrued within six
Years next before the Day of obtaining the said original
Writ of him the said *Thomas*; and that the said *Thomas*
after the Death of him the said *John* sued forth the said
original Writ of him the said *Thomas* against the said *Hen-
ry* with an Intention that upon the Appearance of him the
said *Henry* to the said Writ of him the said *Thomas*, he the
said *Thomas* would declare thereupon against the aforesaid
Henry for the Cause aforesaid in the Declaration of her the
said *Mary* mentioned, according to the Custom of the
said Court of the Bench here; and that the aforesaid *Tho-
mas* in the said several original Writs of him the said *Tho-
mas* named, and the aforesaid *Thomas* in the Writ and De-
claration of her the said *Mary* above named, are one and
the same Person, and not others nor divers; and that the
aforesaid *John* in the said first original Writ of him the
said *Thomas* above named, and the said *John* in the Writ
and Declaration of her the said *Mary* above named, are
one and the same Person, and not others or divers; and
that the said *Henry* the now Defendant, and the said *Hen-
ry* in the said original Writ of him the said *Thomas* above
named,

named, are one and the same Person, and not others nor divers; and this she is ready to verify: Whereupon she prays Judgment and her Damages, by occasion of the Premises, to be adjudged to her, &c.

Demurrer, and Joinder in Demurrer.

Trinity Term in the 6th Year of William and Mary.
Roll 507.

Tonkin against Crocker. Ld. Raym. 880.

Cornwall, (to wit) **J**AMES Crocker, Gent. and Leonard Replevin for
Billing were summoned to answer taking a brass
William Tonkin of a Plea wherefore they took one brass Pan of him the said William, and unjustly detained the same, against Gages and Pledges, &c. And whereupon the said William by Philip Hawkins his Attorney complains that the aforesaid James and Leonard on the fourth Day of November in the fifth Year of the Reign of our Lord William and our Lady Mary now King and Queen of England, &c. at the Parish of Saint Agnes, in a certain Place there called the Kitchen, took one Brass Pan of him the said William, and unjustly detained the same, against Gages and Pledges, until, &c. whereupon he saith that he is injured, and hath Damage to the Value of one hundred Shillings, and thereupon he brings Suit, &c.

And the aforesaid James and Leonard by John Foot their Attorney come and defend the Force and Injury when, &c. Cognisance as
and as Bailiffs of William Mobun, Esq; well acknowledge Bailiffs of a
the taking of the said brass Pan in the Place in which, &c. Manor.
and justly, &c. because they say that before the said Time when the taking of the said brass Pan is supposed to be done, one Hugh Tonkin, Esq; was seised of a certain Mesuage and fifty Acres of Land called Trewartha with the Appurtenances, in the Parish of St. Agnes aforesaid in the County aforesaid, whereof the aforesaid Place called the Kitchen is, and at the said Time when, &c. was Parcel, in his Demesne as of Fee, and held the Tenements aforesaid of the aforesaid William Mobun as of his Manor of Mithian with the Appurtenances in the same County by Fealty, and the Rent of four Shillings to be paid every Year at the Feast of Saint Michael the Archangel, and also by doing Service and Suit at the Court of the Manor aforesaid, to be holden twice in the Year at that Manor, of which said Services the aforesaid William Mobun was seised by the
Hands

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Hands of the said *Hugh Tonkin*, as by the Hands of his verry Tenant, that is to say, by Fealty and Suit of Court aforesaid, as of Fee and Right and of the Rent aforesaid in his Demesne as of Fee; and because four Shillings for the Rent aforesaid for one Year ended at the Feast of Saint *Michael* the Archangel in the fifth Year of the Reign of the said now Lord the King and Lady the Queen to the aforesaid *William Mobun* at the said Time when, &c. were in Arrear not paid, and Suit of Court at the Court of the said *William Mobun* of his Manor aforesaid at the Parish of Saint *Agnes* within the said Manor, on the 24th Day of *October* in the fifth Year of the Reign of the said Lord the King and said Lady the Queen aforesaid, holden for the said Manor, was not done, they the said *James* and *Leonard*, as Bailiffs of the said *William Mobun*, well acknowledge the taking of the brass Pan aforesaid in the said Place in which, &c. for the Rent aforesaid so being in Arrear, and for the Suit of Court so not done, as in Parcel of the Tenements aforesaid with the Appurtenances, holden of the aforesaid *William Mobun* in Manner aforesaid, and justly, &c. as within his Fee and Demesne, &c.

Plea in Bar
to the Cogni-
fance.

And the aforesaid *William Tonkin* saith that the said *James* and *Leonard*, as Bailiffs of the aforesaid *William Mobun*, ought not to acknowledge the taking of the said brass Pan in the said Place in which, &c. to be just, because protesting that the said *William Mobun* was not seised of the Services aforesaid as he above supposes, he the said *William Tonkin* for Plea saith that the aforesaid *Hugh Tonkin* held the Tenements aforesaid of the aforesaid *William Mobun*, as of his Manor of *Mithian* aforesaid, by the Rent of four Shillings for every Year, to be paid at the Feast of Saint *Michael* the Archangel only; without this, that the aforesaid *Hugh Tonkin* held the Tenements aforesaid of the aforesaid *William Mobun* as of his Manor aforesaid with the Appurtenances, by Fealty, and the Rent of four Shillings, to be paid every Year at the Feast of Saint *Michael* the Archangel, and also by doing Service and Suit at the Court of the Manor aforesaid, to be holden twice in the Year at that Manor, as the aforesaid *James* and *Leonard* have above alledged; and this he is ready to verify: Wherefore since the said *James* and *Leonard* have above acknowledged the taking of the said brass Pan in the said Place in which, &c. he the said *William Tonkin* prays Judgment and his Damages, by occasion of the taking and unjustly detaining the said brass Pan, to be adjudged to him, &c.

Traverse.

And

And the aforesaid *James* and *Leonard* as before say, that Replication the said *Hugh Tonkin* held the Tenements aforesaid of the and Issue on aforesaid *William Mobun* as of his Manor aforesaid with the Traverse. the Appurtenances, by Fealty, and the Rent of four Shillings, to be paid every Year at the Feast of Saint *Michael* the Archangel, and also by doing Service and Suit at the Court of the Manor aforesaid, to be holden twice in the Year at that Manor, as they the said *James* and *Leonard* have above in pleading alledged; and of this they put themselves upon the Country, and the aforesaid *William* likewise: Therefore the Sheriff is commanded that he cause to come here from the Day of the Holy *Trinity* in three Weeks twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. At which Day the Jury between the Parties aforesaid of the Plea aforesaid was respited between them here until this Day, to wit, from the Day of Saint *Michael* in three Weeks then next following, unless the Justices of the Lord the King, assigned *Nisi prius.* to take the Assizes in the County aforesaid, by Form of the Statute, &c. on *Wednesday* the first Day of *August* next, past, at *Lanceston* in the County aforesaid should before come: And now here at this Day come as well the said *William* as the said *James* and *Leonard* by their Attornies aforesaid, and the said Justices assigned to take the Assizes, before whom, &c. have sent here their Record in these Words: After- *Postea.* wards on the Day and at the Place within contained, before *John Powell*, Knt. one of the Justices of the Lord the King and Lady the Queen of the Bench, and *Thomas Rokeby*, Knt. one other of the Justices of the said Lord the King and Lady the Queen of the Bench, Justices of the said Lord the King and Lady the Queen assigned to take the Assizes in the County of *Cornwall*, by Form of the Statute, &c. came the within named *William Tonkin* by his Attorney within contained, and the within written *James Crocker*, Gent. and *Leonard Billing*, although solemnly called did not come, but made Default; therefore the Jury, whereof Mention is within made, is taken against them by Default: And the Jurors of that Jury being called, some of them, that is to say, *Edward Vowell*, *Ferdinando Spiller* and *Francis Kelley* came and are sworn upon that Jury: And because the Rest of the Jurors of the same Jury did not appear, therefore others of the By-standers, chosen by *Tales de Circumstantibus.* the Sheriff of the County aforesaid for this Purpose, at the Request of the said *William Tonkin*, and by the Command of the Justices aforesaid are newly appointed, whose Names are affiled in the Panel within written, according to the

PLEADINGS TO THE CASES.

Special Verdict.

the Form of the Statute in such Case lately made and provided; and the Jurors so newly appointed, that is to say, *Godfrey White, Giles Richards, Edward Mitchell, Reginald Cooke, John Bridge, Nicholas Leigh, John Goodman, George Bazon* and *William Payte* being called likewise came, who being chosen, tried and sworn to speak the Truth concerning the Matters within contained, together with the other Jurors aforesaid before impanelled and sworn to this Purpose, say upon their Oath, that long before the within written Time when the taking of the within written brass Pan is within supposed to be done, the Manor of *Mitbian* in the County within written within mentioned was an antient Manor, of which said Manor the within named *William Mobun, Esq;* is, and at the within written Time of the taking of the said brass Pan was seised in his Demesne as of Fee: And the Jurors aforesaid further say upon their Oath aforesaid, that within the Manor aforesaid, from Time whereof the Memory of Man is not to the contrary, there hath been an antient Court holden there before the Steward of the Manor aforesaid for the Time being twice in the Year, and there hath been several Freehold Tenants and several Suitors who have done Suit at the Court aforesaid of the same Manor; and that the within named *Hugh Tonkin, Esq;* and all his Ancestors were Freehold Tenants of the same Manor, and have holden the Messuage and Tenements within mentioned in the Avowry within written of the aforesaid *William Mobun* and his Predecessors Lords of the same Manor, as of his Manor of *Mitbian* aforesaid with the Appurtenances, by Fealty, and the Rent of four Shillings, to be paid every Year at the Feast of Saint Michael the Archangel, and also by doing Service and Suit at the Court of the Manor aforesaid, to be holden twice in the Year at that Manor, as within mentioned in the Avowry within written: And the Jurors aforesaid further say upon their Oath aforesaid, that the within Manor of *Mitbian* aforesaid there is, and for twenty Years now last past there hath been one only Freehold Tenant or Free Suitor, to wit, the aforesaid *Hugh Tonkin*, but at the within written Time when, &c. and also from Time whereof the Memory of Man is not to the contrary there was, have been and now are several Customary and Conventional Tenants and Suitors of the same Manor: And the Jurors aforesaid further say upon their Oath aforesaid, that for Rent and Service in Arrear the aforesaid *James Crocker* and *Leonard Billing*, as Bailiffs of the said *William Mobun, Esq;* Lord of the Ma-

nor

nor of *Mithian* aforesaid within written, at the Time when, &c. took and detain the brass Pan within mentioned in the Declaration within written: But whether upon the whole Matter aforesaid found by the Jurors aforesaid in Form aforesaid the said *Hugh Tonkin* held the Tenements within mentioned in the Cognisance within written of the aforesaid *William Mobun*, as of his Manor aforesaid with the Appurtenances, by Fealty, and the Rent of four Shillings to be paid every Year at the Feast of Saint *Michael* the Archangel, and also by doing Service and Suit at the Court of the Manor aforesaid, to be holden twice in the Year at that Manor or not, the Jurors aforesaid are wholly ignorant, and thereupon they pray the Advice and Consideration of the Justices of the Court of the said Lord the now King here of the Bench: And if upon the whole Matter aforesaid found by the Jurors aforesaid in Form aforesaid, it shall seem to the Justices of the Court of the said Lord the now King of the Bench here, that the said *Hugh Tonkin* did not hold the Tenements aforesaid of the said *William Mobun* as of his Manor aforesaid with the Appurtenances, by Fealty, and the Rent of four Shillings to be paid every Year at the Feast of Saint *Michael* the Archangel, and also by doing Service and Suit at the Court of the Manor aforesaid to be holden twice in the Year at that Manor, then they the said Jurors say upon their Oath aforesaid, that the said *Hugh Tonkin* did not hold the Tenements aforesaid of the said *William Mobun* as of his Manor aforesaid with the Appurtenances, by Fealty, and the Rent of four Shillings to be paid every Year at the Feast of Saint *Michael* the Archangel, and also by doing Service and Suit at the Court of the Manor aforesaid, to be holden twice in the Year at that Manor, as the said *James Crocker* and *Leonard Billing* within in pleading have alledged; and then they assess the Damages of him the said *William Tonkin* by the Occasion within written, besides his Costs and Charges by him laid out about his Suit in this Behalf, to two Pence, and for those Costs and Charges to 40 Shillings; but if, &c. (to conclude in the usual Form.)

Michaelmas Term in the 5th Year of William and Mary,
in C. B. Roll 445.

Gerrard against Gerrard. 1 Ld. Raym. 72.

Staffordshire, (to wit) **E**LIZABETH Gerrard Widow, Dower.
who was the Wife of Digby Lord
Gerrard Baron of Gerrard's Bromley, by Isaac Hawkins her
Attorney,

PLEADINGS TO THE CASES.

Abridgment
of the De-
mand.

Tenant pleads
Dotem non.

Thomas Ger-
rard created
a Baron by
Jac. 1.

Attorney, demands against *Charles* Lord *Gerrard* Baron of *Gerrard's Bromley*, the third Part of one Capital Messuage called *Bromley Hall* with the Appurtenances in *Ridge, Padmore, Asbley*, the Parishes of *Eccleshal* and *Audley*, and of the Hundred of *Pynebill* with the Appurtenances, and of one hundred and one Shillings Rent in the same Hundred, as the Dower of her the said *Elizabeth*, of the Endowment of the said *Digby*, heretofore her Husband, &c. And it is to be known that the said *Elizabeth* in the Court of the Lord the King and Lady the Queen here made her demand, in the Writ, of the third Part of three other Messuages, one Dovehouse, four Barns, four Gardens, four Orchards, and four hundred and six Acres of Land with the Appurtenances; and the said *Elizabeth* now doth abridge her Demand to the said third Part of the said Capital Messuage, Hundred and Rent, with the Appurtenances, &c. And the said *Charles* Lord *Gerrard* by *George Wheeler* his Attorney comes, and as to the said Capital Messuage called *Bromley Hall* with the Appurtenances, Parcel of the Tenements aforesaid with the Appurtenances in the Demand aforesaid above specified, saith that the said *Elizabeth* *Gerrard* ought not to have her Dower of the Capital Messuage aforesaid with the Appurtenances of the Endowment of the said *Digby* Lord *Gerrard* heretofore her Husband, because he saith that the said Capital Messuage in the Demand aforesaid mentioned is named and called, and on the Day of obtaining the said original Writ of her the said *Elizabeth*, and also from Time whereof the Memory of Man is not to the contrary, was named and called as well by the Name of *Gerrard's Bromley*, as by the Name of *Bromley Hall*, and that long before the Day of obtaining the said original Writ of the said *Elizabeth*, that is to say, on the 20th Day of *July* in the first Year of the Reign of the Lord *James* the First late King of *England*, one *Thomas* *Gerrard*, Knt. was seised of the said Capital Messuage with the Appurtenances, (amongst other Things) in his Demesne as of Fee; and being so seised thereof, the said late King *James* the First, by certain Letters Patent under his Great Seal of *England*, bearing Date at *Westminster* in the County of *Middlesex* the first Day of *July* in the first Year aforesaid, (the Exemplification whereof sealed under the Great Seal of *England*, bearing Date at *Westminster* the first Day of *April* in the first Year of the Reign of the Lord and Lady the now King and Queen, he the said *Charles* Lord *Gerrard* brings here into the Court) advanced, preferred and created the said

Thomas

Thomas Gerrard tot he State, Degree, Dignity and Honour of *Baron Gerrard of Gerrard's Bromley* aforesaid in in the said County of *Stafford*, and preferred, constituted and created him the said *Thomas Gerrard* *Baron Gerrard of Gerrard's Bromley* aforesaid, and by the said Letters Patent assigned and gave to him the said *Thomas* the Name, Stile, Dignity and Title of *Baron Gerrard of Gerrard's Bromley*; To have and to hold to the said *Thomas Gerrard* and his Heirs Male of his Body issuing for ever. And the said late King by his same Letters Patent further granted to him the said *Thomas Gerrard*, that he and his Heirs Male should have, hold and possess, and every one of them should have, hold and possess a Seat and Place, and Voice in Parliament, and in the public Assemblies and Councils of the said late King, his Heirs and Successors, within his Kingdom of *England*, amongst the other Barons, as Barons of Parliament, and of the publick Assemblies and Councils, as by the same Letters Patent, among other Things, more fully appears: By Virtue of which said Letters Patent the said *Thomas Gerrard* was seised as of Fee-tail of the State, Degree, Dignity and Honour of *Baron Gerrard of Gerrard's Bromley* aforesaid, and was a Baron of this Kingdom of *England*, to wit, to himself and his Heirs Male of his Body issuing, and was comorant and resiant with his Family, Servants and Attendants in the said Capital Messuage of *Gerrard's Bromley*, called *Bromley Hall*; and the said Capital Messuage with the Appurtenances became the Head of the Barony of him the said *Thomas Lord Gerrard*, *Baron Gerrard of Gerrard's Bromley*, and was and hath continued to be, and yet continueth and is the Head of the Barony. And the said *Charles Caput Baron* *Lord Gerrard* farther saith, that the said *Thomas Lord Gerrard*, *Baron Gerrard of Gerrard's Bromley* aforesaid, being so seised of the said Barony, and the said Capital Messuage with the Appurtenances, the Head of his Barony aforesaid, he the said *Thomas Lord Gerrard*, *Baron Gerrard of Gerrard's Bromley*, afterwards at *Gerrard's Bromley* aforesaid died seised of such his Estate; after whose Death the said Barony and Capital Messuage, the Head of the said Barony with the Appurtenances descended to *Gilbert Lord Gerrard*, as Son and Heir of the said *Thomas Lord Gerrard*, whereby the said *Gilbert Lord Gerrard* entered into the said Capital Messuage with the Appurtenances, and was seised thereof in his Demesne as of Fee, and of the Barony and Honour aforesaid as of Fee-tail and Right, and was comorant and resiant in the said Capital Messuage; and

That he was comorant at *Bromley Hall* which was *Caput Baronie*.
Descent to *Gilbert Lord Gerrard*.

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Then to *Dutton Lord Gerrard.*

Then to *Charles Lord Gerrard.*

The Marriage Settlement of *Jey* aforesaid, by his certain Indenture made between him *Charles Lord Gerrard.*

and being so seised thereof, he the said *Gilbert Lord Gerrard* died seised of such his Estate thereof, after whose Death the said Barony and Capital Messuage, the Head of the said Barony with the Appurtenances, descended to *Dutton Lord Gerrard* as Son and Heir of the said *Gilbert Lord Gerrard*, whereby the said *Dutton Lord Gerrard* entered into the said Capital Messuage with the Appurtenances, and was seised thereof in his Deme ne as of Fee, and of the Barony and Honour aforesaid as of Fee-tail and Right, and was comorant and resiant in the said Capital Messuage; and being so seised thereof, he the said *Dutton Lord Gerrard* died seised of such his Estate thereof, after whose Death the said Barony and Capital Messuage the Head of the said Barony with the Appurtenances descended to *Charles Lord Gerrard* as Son and Heir of *Dutton Lord Gerrard*, whereby the said *Charles Lord Gerrard* entered into the said Capital Messuage with the Appurtenances, and was seised thereof in his Demesne as of Fee, and of the Barony and Honour aforesaid as of Fee-tail and Right, and was comorant and resiant in the said Capital Messuage; and being so seised thereof, he the said *Charles Lord Gerrard* afterwards, to wit, on the 25th Day of November in the twelfth Year of the Reign of the Lord *Charles the Second* late King of England, &c. at *Gerrard's Brom-* Settlement of *Jey* aforesaid, by his certain Indenture made between him the said *Charles Lord Gerrard* of the one Part, and certain Persons, *Charles Fane* Esq; commonly called Lord *Le Dispencer*, *Edward Rockingham*, *Kildare Lord Digby* of *Geshall* in Ireland, and *Anthony Cope* Bart. by the Names of *Charles*, commonly called Lord *Le Dispencer* eldest Son and Heir apparent of the most noble *Mildmay* Earl of *Westmorland*, Lord *Rockingham* of *Casore de Rockingham* in the County of *Northampton*, *Kildare Lord Digby* of *Geshall* in the Kingdom of Ireland, and *Anthony Cope* of *Hanwall* in the County of *Oxford* Bart. of the other Part; and in Consideration of a certain Sum of Money to him the said *Charles Lord Gerrard*, by the said *Charles Lord Le Dispencer*, *Edward Lord Rockingham*, *Kildare Lord Digby* and *Anthony Cope*, in Hand paid, bargained and sold to the said *Charles Lord Le Dispencer*, *Edward Lord Rockingham*, *Kildare Lord Digby* and *Anthony Cope*, the said Capital Messuage with the Appurtenances (among other Things) To have and to hold to the said *Charles Lord Le Dispencer*, *Edward Lord Rockingham*, *Kildare Lord Digby* and *Anthony Cope*, their Executors, Administrators and Assigns, from the Day next before the Date of the said Indenture, for and during

and unto the full End and Term of six Months from thence next following and fully to be compleat and ended; by Virtue of which said Bargain and Sale, and also by Force of a certain Act made and provided in the Parliament of Lord Henry the 8th late King of England, holden at Westminster in the County of Middlesex on the fourth Day of February in the 27th Year of his Reign, for transferring of Uses into Possession, they the said Charles Lord Le Dispenser, Edward Lord Rockingham, Kildare Lord Digby and Anthony Cope were possessed of the said Capital Messuage with the Appurtenances; and being so possessed thereof, and the said Charles Lord Gerrard being seised of the Reversion thereof in his Demesne as of Fee, he the said Charles Lord Gerrard afterwards, to wit, on the 29th Day of November in the 12th Year abovesaid, at Gerrard's Bromley aforesaid, by a certain Indenture Quadripartite, made between him the said Charles Lord Gerrard, by the Name of the Noble Charles Lord Gerrard of Gerrard's Bromley in the County of Stafford of the first Part, one George Digby, Esq; and Jane Digby Spinster, by the Names of George Digby of Sandon in the County of Stafford Esq; and Jane Digby sole Daughter and only Child of the said George Digby of the second Part, the aforesaid Charles Fane called Lord Le Dispenser, Edward Lord Rockingham, Kildare Lord Digby of Geshall in Ireland, and Anthony Cope, of the third Part, and Edward Littleton Bart. Walter Cbetwind the younger Esq; Thomas Kinnersey Esq; and William Cbetwind Esq; by the Names of Edward Littleton of Pelleton Hall in the County of Stafford Bart. Walter Cbetwind the younger of Ingestrey in the said County of Stafford Esq; and William Cbetwind of Ridgley in the said County of Stafford Esq; of the fourth Part, granted to the said Charles Lord Le Dispenser, Edward Lord Rockingham, Kildare Lord Digby and Anthony Cope, their Heirs and Assigns, the Reversion of the said Capital Messuage with the Appurtenances; To have and to hold to the said Charles Lord Le Dispenser, Edward Lord Rockingham, Kildare Lord Digby and Anthony Cope, their Heirs and Assigns, to the Use and Behoof of the said Charles Lord Gerrard and his Heirs until the Time of the Solemnization of the then intended the Settlement of the said Charles Lord Gerrard and the said Jane Digby; and from and after the Solemnization of the said Marriage, then to the Use and Behoof of the said Charles Lord Gerrard for and during the Term of his natural Life without Impeachment of Waste; and from and after the Determination of the said Estate of the

The Uses of
ment to 1, 2.
3. &c. Sons
in Tail Male.

PLEADINGS TO THE CASES.

said *Charles* Lord *Gerrard*, to the Use and Behoof of the said *Edward Littleton*, *Walter Cbetwind*, *Thomas Kinnerfley* and *William Cbetwind* and their Heirs during the natural Life of the said *Charles* Lord *Gerrard*; and after his Decease, then to the Use and Behoof of the first Son of the said *Charles* Lord *Gerrard* on the Body of the said *Jane Digby* lawfully to be begotten, and to the Heirs Male of the Body of such first Son lawfully issuing; and for want of such Issue, then to the Use and Behoof of the second Son of the said *Charles* Lord *Gerrard* on the Body of the said *Jane Digby* lawfully to be begotten, and to the Heirs Male of the Body of such second Son lawfully issuing; and for want of such Issue, then to the Use and Behoof of the third Son of the said *Charles* Lord *Gerrard* on the Body of the said *Jane Digby* lawfully to be begotten, and to the Heirs Male of the Body of such third Son lawfully issuing; and for want of such Issue, then to the Use and Behoof of all and every the Son and Sons of the said *Charles* Lord *Gerrard* on the Body of the said *Jane* lawfully to be begotten successively as they shall be in Seniority of Age and Priority of Birth, one after another, and of the Heirs Males of their respective Bodies lawfully to be begotten, always preferring the elder Son and the Heirs Male of his Body before the younger and the Heirs Male of his Body to be begotten; and for want of such Issue, or in Case that the said *Jane* shall happen to be with Child at the Time of the Decease of the said *Charles* Lord *Gerrard*, then to the Use and Behoof of the said *Jane* until her Death, or the Birth or Delivery of such Child or Children of whom or which she the said *Jane* shall be so pregnant at the Time of the Death of the said *Charles* Lord *Gerrard*, which shall first happen, and afterwards to the Use and Behoof of the first Son of the said *Charles* Lord *Gerrard* on the Body of the said *Jane* begotten, and to the Heirs Male of the Body of such first Son lawfully to be begotten; and for want of such Issue, to the Use of all and every the Sons of the said *Charles* Lord *Gerrard* on the Body of the said *Jane* lawfully to be begotten, and of their Heirs Males of their respective Bodies to be begotten successively; and for want of such Issue in Case the said *Charles* Lord *Gerrard* should have any Issue Female living by him on the Body of the said *Jane* begotten, then to the Use and Behoof of them the said *Edward Littleton*, *Walter Cbetwind*, *Thomas Kinnerfley* and *William Cbetwind*, their Executors, Administrators and Assigns, from the Day of the Death of the said *Charles* Lord *Gerrard*, for and during the Term and Space

If only
Daughters,
then to Trustees for 500
Years.

Space of 500 Years from thence next following and fully to be compleat and ended; and after the End, Expiration, Surrender or other Determination of the said Term, to the Use and Behoof of the Heirs Male of the Body of the said *Thomas Lord Gerrard* Great Grandfather of the said *Charles Lord Gerrard*; and for want of such Issue, then to the Use and Behoof of the right Heirs of the said *Charles Lord Gerrard* for ever; by Virtue of which said Grant, and also by Force of the said Act for transferring of Uses into Possession, the said *Charles Lord Gerrard* was seised of the said Capital Messuage the Head of the said Barony with the Appurtenances to him and his Heirs until the Time of the Solemnization of the said intended Marriage; and being so seised thereof, the said Marriage between the said *Charles Lord Gerrard* and the said *Jane Digby* afterward, to wit, on the 30th Day of *November* in the 12th Year of the Reign of the said late King *Charles* the Second, at *Gerrard's Bromley* aforesaid was solemnized; and the said *Charles Lord Gerrard* was then and there espoused and married to the said *Jane* according to the Rites of the Church of *England*, whereby the said *Charles Lord Gerrard* was seised of the said Capital Messuage being the Head of his said Barony with the Appurtenances in his Demesne as of Freehold for the Term of his Life, the Remainder thereof appertaining in Form aforesaid; and being so seised thereof, he the said *Charles Lord Gerrard* afterwards had Issue of the Body of the said *Jane* his then Wife begotten, to wit, the said *Digby*, afterwards *Lord Gerrard*, his only Son, to wit, at *Gerrard's Bromley* aforesaid: And afterwards the said *Charles Lord Gerrard* died there without Issue Female of his Body issuing, after whose Death the said Barony descended to the said *Digby Lord Gerrard* as Son and Heir of the said *Charles Lord Gerrard*; and the said *Digby Lord Gerrard* named in the Demand aforesaid into the said Capital Messuage with the Appurtenances (being the Head of his said Barony as before is set forth) entred and was seised thereof in his Demesne as of Fee-tail, that is to say, to him and his Heirs Male of his Body issuing, with Remainder thereof to his Heirs Male, and of the Barony and Honour aforesaid as of Fee-tail and of Right, and was comorant and resiant in the said Capital Messuage; and being so seised thereof, he the said *Digby Lord Gerrard* afterwards at *Gerrard's Bromley* aforesaid died so seised thereof, and there comorant without Issue Male of his Body issuing, whereby the said Barony and the Remainder of the said Capital Messuage the Head of

Descent from
*Charles Lord
Gerrard* to
*Digby Lord
Gerrard*.

PLEADINGS TO THE CASES.

then to
Charles Lord
Gerrard.

Averment
that the Te-
nant did assign
other Lands
for the De-
mandant's
Dower,

to which she
agreed.

And as to
the demand of
the 3d Part of
the Hundred
and Rent, that
Tenant is
ready to ren-
der, &c.

the said Barony with the Appurtenances above limited to the Heirs Male of the Body of the said *Thomas Lord Gerrard* descended from him the said *Digby Lord Gerrard* to him the said *Charles* now *Lord Gerrard* as Cousin and Heir Male of the Body of the said *Thomas Lord Gerrard* that is to say, as Son and Heir of *Richard Gerrard* the Son and Heir of *John Gerrard* the Son of the said *Thomas Lord Gerrard* and Brother of the said *Gilbert Lord Gerrard*, whereby he the said *Charles* now *Lord Gerrard* entred into the said Capital Messuage with the Appurtenances, being the Head of his said Barony, and was and yet is seised thereof in his Demesne as of Fee-tail, to wit, to him and the Heirs Male of the Body of the said *Thomas Lord Gerrard* issuing and of the Barony aforesaid as of Fee-tail and Right; and this he is ready to verify: Whereupon he prays Judgment if the said *Elizabeth* ought to have her Dower of the said Capital Messuage with the Appurtenances (being the Head of the Barony of him the said *Charles* now *Lord Gerrard*, as before is set forth) of the Endowment of the said *Digby Lord Gerrard* heretofore her Husband; with this, that he the said *Charles* now *Lord Gerrard* will further verify that he the said *Charles* now *Lord Gerrard* after the Death of the said *Digby Lord Gerrard*, and before the Day of obtaining of the said original Writ of the said *Elizabeth*, to wit, on the 20th Day of *March* in the third Year of the Reign of the Lord *James* the Second now King of *England*, &c. at *Gerrard's Bromley* aforesaid assigned to the said *Elizabeth* divers Messuages, Lands and Tenements with the Appurtenances, of a great yearly Value, to wit, being of the yearly Value of 400*l.* being the full third Part of the other Messuages and Lands which were of the said *Digby Lord Gerrard* her late Husband, whereof the said *Elizabeth* was dowable, to have to her the said *Elizabeth* for the Term of her Life in the Name of her Dower happening to her of the said other Messuages and Lands, besides the Tenements aforesaid in the Demand aforesaid mentioned, which were of the said *Digby Lord Gerrard* heretofore her Husband, in the several Counties of *Stafford* and *Chester*; to which said Assignment of Dower of the said other Messuages and Lands the said *Elizabeth* then agreed and accepted thereof, to wit, at *Gerrard's Bromley* aforesaid; and as to the said Hundred of *Pynebill*, and one hundred and one Shillings Rent, being the Residue of the Tenements aforesaid with the Appurtenances in the Demand aforesaid above specified, he the said *Charles* now *Lord Gerrard* saith that he the said *Charles*

now

now Lord *Gerrard* from the Time of the Death of the said *Digby* Lord *Gerrard* always hitherto hath been and yet is ready to render to the said *Elizabeth* her Dower of the same Hundred and Rent; and he here in Court renders the same to her, &c. whereupon she the said *Elizabeth* prays Judgment and Seisin of the third Part of the said Hundred and Rent with the Appurtenances, to be adjudged to her, Judgment for &c. therefore it is considered that the said *Elizabeth* do re- the Deman- cover her Seisin against the said *Charles* of the said third- dant for the Part of the said Hundred and Rent with the Appurte- 3d Part of the nances; and the said *Charles* in Metcy, &c. Hundred and Rent.

And the said *Elizabeth* as to the Plea of the said *Charles* as to the said Capital Messuage called *Bromley Hall* with the Appurtenances above pleaded in Bar saith, that that Plea, and the Matter in the same contained, are not sufficient in Law to bar her the said *Elizabeth* from having her Dower of the said Capital Messuage with the Appurtenances, and that she hath no Necessity, neither is she bound by the Law of the Land to answer to the said Plea in Manner and Form aforesaid above pleaded; and this she is ready to verify: Wherefore for want of a sufficient Answer in this Behalf she the said *Elizabeth* prays Judgment and her Dower of the said Capital Messuage with the Appurtenances, to be adjudged to her, &c. Demurrer to the other Part of the Plea.

And the said *Charles* Lord *Gerrard* since he hath above Joinder in alledged sufficient Matter in Law in his said Plea as to the Demurrer. said Capital Messuage called *Bromley Hall* with the Appurtenances to bar the said *Elizabeth* from having her Dower aforesaid of the same Capital Messuage with the Appurtenances, which he is ready to verify; which said Matter the said *Elizabeth* doth not deny, nor in any way answereth to the same, but wholly refuses to admit that Averment, as before prays Judgment, and that the said *Elizabeth* may be barred from having her Dower of the said Capital Messuage with the Appurtenances: And because the Justices here will advise themselves of and upon the Premises before they give Judgment thereupon, Day is given to the Parties aforesaid here until in eight Days of Saint *Hilary*, to hear their Judgment thereupon, for that they the said Justices here are not yet, &c.

Judgment *per tot' Cur'* for the Demandant in *C. B.* which was affirmed in *B. R.* upon a Writ of Error.

Pleas before our Lord the King at Westminster of the Term of Saint Hilary in the seventh Year of the Reign of our Lord William the Third, now King of England, &c. Roll 697.

Hicks against Downing. 1 Ld. Raym. 99.

Action upon the Case for negligently keeping Fire, by which a Messuage of Plaintiff demised to Defendant was burnt.

Somersetshire, (to wit) **B**E it remembred that heretofore, to wit, in the Term of Saint Michael last past before the Lord the King at Westminster came *Sarab Hicks* Widow, by *Thomas Callow* her Attorney, and brought into the Court of our said Lord the King then there her certain Bill against *John Downing* in the Custody of the Marshal &c. of a Plea of Trespass upon the Case; and there are Pledges of prosecuting; to wit, *John Doe* and *Richard Roe*, which said Bill followeth in these Words, (to wit) *Somersetshire, (to wit) Sarab Hicks* Widow complains of *John Downing* being in the Custody of the Marshal of the Marshalsea of our Lord the King before the King himself, for that, to wit, That whereas the said *Sarab* on the 26th Day of January in the Year of our Lord 1692 was lawfully possessed of and in a certain Messuage situate, lying and being in *East Dundry* in the County aforesaid, for a certain Term of Years then and as yet to come and unexpired; and being so possessed thereof, she the said *Sarab* the same Day and Year aforesaid at *East Dundry* aforesaid demised the Messuage aforesaid (among other Things) to the said *John Downing*; To have and to hold to the said *John Downing* from the 25th Day of March then next following for the Term of three Years, if the said *Sarab Hicks* and *John Downing*, and *Thomas Downing* and *Editb* the Father and Mother of him the said *John Downing* should so long live: By Virtue of which said Demise the said *John Downing* afterwards, to wit, on the 26th Day of March in the Year of our Lord 1693 entred into the Messuage aforesaid, and (among other Things) was possessed thereof for the said Term of three Years above demised to him, the Reversion thereof belonging to her the said *Sarab* for the Residue of the said Term first above mentioned: And the same *Sarab* in Fact saith, that as well the said *Thomas Downing* and *Editb* as the said *John Downing* are yet in Being and in full Life, to wit, at *East Dundry* aforesaid: Nevertheless the said *John Downing* well knowing the Premisses, but contriving and maliciously intending very much to damnify and aggrieve her the said *Sarab*

in this Behalf, he the said *John Downing* on the 20th Day of *June* in the Year of our Lord 1695, (being so possessed of the Messuage aforesaid, as before is set forth, the Reversion thereof belonging to her the said *Sarah* in Form aforesaid) so negligently and improvidently kept his Fire in the Messuage aforesaid, that by reason thereof the same Messuage was then burnt, and is wholly ruined, whereupon she the said *Sarah* saith that she is injured, and hath sustained Damage to the Value of 500*l.* and thereupon she brings Suit, &c.

And now at this Day, to wit, *Thursday* next after eight Imparlance, Days of Saint *Hilary* in this same Term, until which Day the said *John* had leave to imparl to the said Bill, and then to answer, &c. before the Lord the King at *Westminster* comes as well the said *Sarah* by her said Attorney as the said *John* by *Samuel Brewster* his Attorney; and the said *John Downing* defends the Force and Injury when, &c. and saith Not Guilty. that he is not thereof Guilty; and of this he puts himself upon the Country, and the aforesaid *Sarah* likewise: Therefore let a Jury come thereupon before the Lord the King at *Westminster* on *Wednesday* next after eight Days of the Purification of the Blessed *Mary*; and who neither, &c. to recognize, &c. in cause as well, &c. The same Day is given to the Parties aforesaid there, &c.

Entered of Easter Term in the 7th Year of William the Third. 1 *Ld. Raym.* 192.

Reynoldson against Blake and the Bishop of London.

London, (to wit) *HENRY* Bishop of London and Robert Quare Imper-
Blake Clerk were summoned to an- dit of the
swer Thomas Reynoldson, William Bradford and George Church of St.
Woolff, of a Plea that they permit them to present a fit Per- Andrew
son to the Church of Saint Andrew Wardrobe, otherwise Saint Wardrobe.
Andrew near Baynard's Castle, which is void, and belongs
to their Gift, &c. And whereupon the said Francis, George
and William, by Joseph Yate their Attorney say, that in
the late terrible Conflagration of the City of London, hap- The Fire of
pening on the second Day of September in the Year of our London 1666.
Lord 1666, as well the Parish Church of Saint Ann Black- St. Ann Black-
friars, in the Ward of Farringdon Within, as the said Pa- friars and St.
rish Church of Saint Andrew Wardrobe, otherwise Saint Andrew's
Andrew near Baynard's Castle, in the Ward of Castle Bay- Wardrobe
nard, and divers other Parish Churches within the City of were burnt.
London were burnt; and they the said Francis, William and

PLEADINGS TO THE CASES.

The Act for
Union of se-
veral Parish
Churches,

particularly
St. Ann's and
St. Andrew's,
and St. An-
drew's Ward-
robe to be
the Parish
Church.

The Patrons
to present by
Turns.

Who to pre-
sent the first
Time.

St. Andrew's
of greater
Value.

At the Time
of the Act
Thomas Gouge
was seised in
Fee of Black-
friars,

and K. Charles
2. was Patron
of St. An-
drew's.

George further say, That by a certain Act in the Parliament of the said Lord Charles the Second late King of England, &c. holden at Westminster in the County of Middlesex in the 22d Year of his Reign, set forth, (amongst other Things) it is enacted by the Authority of the same Parliament, That the Parish of *Alballows Breadstreet* and the Parish of *Saint John the Evangelist* within the same City should be united into one Parish, and the Church before belonging to the said Parish of *Alballows Breadstreet* should be rebuilt, and should be the Parish Church of the said Parishes so united; and that the Parish of *Saint Andrew Wardrobe* and the Parish of *Saint Ann Blackfriars* within the said City should be united into one Parish, and the Church before belonging to the said Parish of *Saint Andrew Wardrobe* should be the Parish Church of the said Parishes so united. And by the same Act it was further enacted, That the several and respective Patrons of the said Churches so united, should and might present by Turns to that Church only, which by the said Act was appointed to be rebuilt and established for the Parish Church of the Parishes so united as aforesaid; and that the first Presentment to that Church should be made by the Patron of such of the said Churches, the Endowments whereof were of the greatest yearly Value, as by the same Act (among other Things) is more fully manifest and appeareth. And they the said Francis, William and George further say, that at the Time of the making of the said Act of Parliament, the Endowment of the said Church of *Saint Andrew Wardrobe*, otherwise *Saint Andrew near Baynard's Castle*, was of greater yearly Value than the Endowment of the Vicarage of the said Church of *Saint Ann Blackfriars*, to wit, at London in the Parish of *Saint Andrew Wardrobe*, otherwise *Saint Andrew near Baynard's Castle* in the Ward of *Castle Baynard* aforesaid; and that at the said Time of the making of the Act of Parliament aforesaid one *Thomas Gouge* was seised in his Demesne as of Fee of and in the Rectory impropriate of the said Parish of *Saint Ann Blackfriars* in the Ward of *Farringdon Within*, to which the Advowson of the Vicarage of the Parish Church of *Saint Ann Blackfriars* in the Ward aforesaid then did belong, and he was the undoubted Patron of the same Vicarage; and that the Lord Charles the Second late King of England, at the said Time of the making of the said Act of Parliament, was the undoubted Patron of the said Church of *Saint Andrew Wardrobe*, otherwise *Saint An-*

drew

Andrew near Baynard's Castle, and was seised of the Advow-
 son of the said Church of *Saint Andrew Wardrobe*, other-
 wise *Saint Andrew near Baynard's Castle* in the Ward of
Castle Baynard aforesaid, as of Fee and Right, in Right of
 his Crown of *England*; and that the said Church of *Saint*
Andrew Wardrobe, otherwise *Saint Andrew near Baynard's*
Castle, in the Ward of *Castle Baynard*, at the said Time of
 the making of the said Act of Parliament, was full of one
James Cade, Doctor of Divinity, then Rector of the same
 Parish, and that the said *Thomas Gouge* being so seised of
 the aforesaid Rectory of *Saint Ann Blackfriars*, to which,
 &c. he the said *Thomas Gouge* afterwards, to wit, on the
 29th Day of *April* in the 25th Year of the Reign of the
 said Lord *Charles* the Second late King of *England*, &c. at
London aforesaid, in the Parish of *Saint Andrew Wardrobe*
 aforesaid, in the Ward of *Castle Baynard* aforesaid, by his
 Writing indented made between the said *Thomas Gouge*, by
 the Name of *Thomas Gouge* late of the Parish of *Saint Se-*
pulchre London Clerk, Son and Heir of *William Gouge* late
 of *Blackfriars London* Doctor of Divinity deceased of the
 one Part, and *Benjamin Whichcott* of *London* Doctor of
 Divinity, *John Elsum* Feltmaker, *Francis Reynoldson* Tay-
 lor, *John Young* the Elder Stonecutter, *Peter Sambrooke* A-
 pothecary, *William Bradford* Taylor, *William Lawrence*
Baker, *Thomas Flint* Feltmaker, *Andrew Hedges* Taylor,
Robert Tipne Clothworker, *Richard Boote*, *Henry Johnson*
Viſtualler, *John Kue* Feltmonger, *Henry Hills* Printer, *John*
Crapp Woodmonger, and *George Woolfe* Taylor, Inhabi-
 tants within the Precinct of *Blackfriars London* of the
 other Part, the Counterpart whereof, sealed with the Seal
 of the aforesaid *Thomas Gouge*, they the said *William*,
Francis and *George* bring here into Court, the Date where-
 of is the same Day and Year, gave and granted to the said
B. W. &c. (naming the Rest of the Grantees) the said Rec-
 tory of *Saint Ann Blackfriars*, to which, &c. To have
 and to hold the said Rectory of *Saint Ann Blackfriars*, to
 which, &c. to the said Grantees (naming them) and to
 their Heirs and Assigns for ever; by reason whereof the
 said Grantees (naming them) were, and became seised in
 their Demefne as of Fee of and in the said Rectory im-
 appropriate of *Saint Ann Blackfriars* aforesaid, to which, &c.
 with the Appurtenances; and that afterwards, to wit, on
 the last Day of *July* in the 25th Year of the Reign of the
 said Lord *Charles* the Second late King of *England*, &c.
 the aforesaid *James Cade*, at *London* aforesaid, in the Parish
 of

At the Time
 of the Act
 J. C. was In-
 cumbent of
 St. Andrew's
 Wardrobe.

Thomas Gouge
 sells his Ad-
 vovson of
 Blackfriars to
 several of the
 Inhabitants in
 Fee.

J. C. died, by of Saint *Andrew Wardrobe* afore said, in the Ward of *Cof-*
which *St. An-* *tle Baynard* afore said died; by whose Death the said Church
drew's was of Saint *Andrew Wardrobe*, otherwise Saint *Andrew* near
first void after *Baynard's Castle*, in the Ward of *Castle Baynard* afore said,
the Act, and was first void after the making of the said Act of Parliam-
Charles 2. ent; and thereupon the said late King *Charles* the Se-
presented cond, according to the Tenor and Purport of the said Act,
J. S. in his Turn presented one *John Stoning* his Clerk to the
said Church of Saint *Andrew Wardrobe*, otherwise Saint

who was in-
stituted and
inducted.

The Inhabi-
tants of *Black-*
friars all dead
but the Plain-
tiffs.

J. S. the
King's In-
cumbent dies,

whereby the
Plaintiffs as
the surviving
Grantees
ought to pre-
sent.

Andrew near *Baynard Castle*, being so void; who, upon the
Presentation of him the said late King, was there lawfully
admitted, instituted and inducted in the same, in the Time
of Peace, in the Time of him the said late King *Charles*
the Second; which said Presentation was the first and next
Presentation made to that Church after the making of the
Act afore said; and that the Church being full of the said
John Strong, the said *B. W. J. E. J. T. P. S. W. L. T. F.*
A. H. R. T. R. B. H. J. J. K. H. H. and *J. C.* at Lon-
don afore said in the Parish of Saint *Andrew Wardrobe* a-
fore said in the Ward of *Castle Baynard* afore said died,
whereby the said *Francis Reynoldson*, *William Bradford* and
George Woolfe were seised of the said Rectory of Saint *Ann*
Blackfriars, to which, &c. in their Demesne as of Fee,
by Right of Survivorship, and by Virtue of the Act of
Parliament afore said had the Right of presenting to the
said Church of Saint *Andrew Wardrobe*, otherwise Saint
Andrew near *Barnard's Castle*, when vacant, in their Turn,
as Patrons of the said Vicarage of Saint *Ann Blackfriars*
afore said: And that the said *John Stoning* afterwards, to
wit, on the 15th Day of *August* in the 6th Year of the
Reign of the Lord the now King and of the Lady *Mary*
the late Queen of *England*, &c. at *London* afore said in the
Parish of Saint *Andrew Wardrobe* afore said in the Ward of
Castle Baynard afore said died; by whose Death the said
Church of Saint *Andrew Wardrobe*, otherwise Saint *An-*
drew near *Baynard's Castle* was void, by reason whereof it
belongeth to them the said *Francis*, *William* and *George* to
present, as in their Turn a fit Person to the Church of Saint
Andrew Wardrobe, otherwise Saint *Andrew* near *Baynard's*
Castle afore said, being so void; and the afore said *Henry* and
Robert Blake unjustly hinder them: Whereupon they say
that they are injured, and have Damage to the Value of
100*l.* and thereupon they bring Suit, &c.

To this Declaration there is a general Demurrer, and a
Joinder in Demurrer.

Pleas before our Lord the King at Westminster of the Term of the Holy Trinity in the seventh Year of the Reign of William the Third, now King of England, &c. Roll 176.

Bacon against Dubarry. 1 Ld. Raym. 246.

London, (to wit) **B**E it remembred that heretofore, to wit, in the Term of *Easter* last past before the Lord the King at *Westminster* came *Josiab Bacon* by *William Baker* his Attorney, and brought into the Court of the said Lord the King then there his certain Bill against *David Dubarry*, otherwise called *David Dubarry* of London Merchant, in the Custody of the Marshal &c. of a Plea of Debt; and there are Pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said Bill follows in these Words, (to wit) *London*, (to wit) *Josiab Bacon* complains of Debt upon a *David Dubarry* otherwise called *David Dubarry* of London Bond. Merchant, being in the Custody of the Marshal of the *Marshalsea* of the Lord the King before the King himself, of a Plea that he render to him 600 *l.* of lawful Money of *England*, which he owes to him and unjustly detains, for that, to wit, That whereas the aforesaid *David* on the 8th Day of *November* in the Year of our Lord 1694, at *London* in the Parish of the Blessed *Mary of the Arches* in the Ward of *Cheape*, by his certain Writing obligatory, sealed with the Seal of him the said *David*, and now here shewn to the Court of the said Lord the King, the Date whereof is the same Day and Year, acknowledged himself to be held and firmly bound to the aforesaid *Josiab* in the aforesaid 600 *l.* to be paid to him the said *Josiab* when he should be thereunto requested: Nevertheless the aforesaid *David*, although often requested, &c. hath not yet paid the aforesaid 600 *l.* to the aforesaid *Josiab*, but hath hitherto altogether denied, and as yet doth deny to pay the same to him, to the Damage of him the said *Josiab* of 100 *l.* and thereupon he brings Suit, &c.

And now at this Day, to wit, *Friday* next after the *Mor-Imparlance*. row of the *Holy Trinity* in this same Term, until which Day the aforesaid *David* had leave to imparl to the Bill aforesaid, and then to answer, &c. before the Lord the King at *Westminster* come as well the aforesaid *Josiab* by his Attorney aforesaid as the aforesaid *David* by *John Green* his Attorney; and the said *David* defends the Force and Injury

Oyer of Arbitration Bond and Condition.

Injury when, &c. and prays Oyer of the Writing obligatory aforesaid; and it is read to him, &c. He also prays Oyer of the Condition of the same Writing obligatory aforesaid, and it is read to him in these Words, (to wit) The Condition of this Obligation is such, That if the above-bouden *David Dubarry*, for and on the Behalf of *Jacob Derutter* of *Hamborough* Merchant, his Executors and Administrators, do and shall well and truly stand to, obey, abide, observe, perform, fulfil and keep the Award, Arbitrament, Order, final End, Determination and Judgment of *Maurice Williams*, *Nicholas Cutler* and *Michael Milford* of *London* Merchants, or any two of them, Arbitrators, as well on the Part and Behalf of the above named *Josiah Bacon*, as of the said *David Dubarry*, and by their mutual Assents and Consents indifferently elected, named and chosen to arbitrate, award, order, judge, determine, and a final End to make, of, for, upon and concerning all, and all Manner of Action and Actions, Cause and Causes of Action, Suits, Debts, Accounts, Reckonings, Sum and Sums of Money, Covenants, Contracts, Promises, Trespasses, Damages, Bonds, Bills, Specialties, Judgments, Extents, Executions, Strifes, Differences, Controversies, Matters, Claims and Demands whatsoever as now are, or at any Time before the Date above written, have been moved, stirred up or depending between the said *David Dubarry* as Attorney to the said *Jacob Derutter* of the one Part, and the said *Josiah Bacon* of the other Part, for, touching or concerning certain Accounts between the said *Josiah Bacon* and the said *Jacob Derutter*, so as the said Award, Arbitrament, Order, final End, and Determination and Judgment of the said Arbitrators, or any two of them, of and upon the Premises, be made and set down in Writing indented under their Hands and Seals, and be delivered, or ready to be delivered up unto the said Parties, respectively in difference, requiring the same at or in the now Dwelling-house of *John Chambers* Scrivener, situate in *Lombard-Street London*, on or before the one and twentieth Day of this Instant *November*, then this Obligation to be void, or else to stand in full Force and Virtue; which being read and heard, he the said *David Dubarry* saith that the aforesaid *Josiah Bacon* ought not to have or maintain his aforesaid Action thereupon against him, because he saith that the aforesaid *Maurice Williams*, *Nicholas Cutler* and *Michael Milford*, in the Condition aforesaid named, or two of them, did not make any Award in Writing indented under their Hands and Seals, of, for and concerning the Premises aforesaid

Plea that the Arbitrators made no Award.

foresaid in the Condition aforesaid above specified upon or before the one and twentieth Day of *November* in the Condition aforesaid mentioned, according to the Form and Effect of the Condition aforesaid; and this he is ready to verify: Whereupon he prays Judgment if the aforesaid *Josiah Bacon* ought to have or maintain his aforesaid Action against him, &c.

And the aforesaid *Josiah Bacon* saith that he by any Plaintiff re- Thing by the aforesaid *David Dubarry* above in pleading plies an A- lledged ought not to be barred from having his Action ward.

foresaid thereupon, because he saith that after the mak- ing the Writing obligatory aforesaid, to wit, upon the 21st Day of *November* in the Year of our Lord 1694, in the Condition aforesaid specified, at *London* aforesaid in the Pa- rish and Ward aforesaid, the aforesaid *Nicholas Cutler* and *Michael Milford*, two of the Arbitrators in the Condition aforesaid above specified, took upon themselves the Bur- then of arbitrating and ordering of and concerning the Pre- mises in the Condition aforesaid above-mentioned, and made their Award in Writing indented under their Hands and Seals between the Parties, of and concerning the Pre- mises in the Condition aforesaid mentioned, by which said Award here brought into Court they the same Arbitrators, reciting that whereas the aforesaid *David*, for and on the The Award Behalf of *Jacob Derutter* of *Hamborough* Merchant, and set forth. the aforesaid *Josiah*, by interchangeable Obligations bear- ing Date the 8th Day of the then Instant *November*, were bound to each other in 600*l.* conditioned to stand to the Award of the said *Maurice Williams*, *Nicholas Cutler* and *Michael Milford*, or any two of those Arbitrators, mutually between themselves chosen to adjudge, determine, and fi- nally to make an End of, and in all and all Manner of Ac- tion and Actions, Cause and Causes of Action, Suits, Debts, Accounts, Reckonings, Sum and Sums of Money, Cove- nants, Contracts, Promises, Trespasses, Damages, Bonds, Bills, Specialties, Judgments, Extents, Executions, Strifes, Differences, Controversies, Matters, Claims and Demands whatsoever, which then were, or at any Time before the Date of the Writing obligatory aforesaid had been moved, stirred up or depending between the said *David Dubarry* (as Attorney to the said *Jacob Derutter*) and the said *Josiah Bacon* touching the Accounts between the said *Josiah Bacon* and the said *Jacob Derutter*, so that the Award and Deter- mination of the said Arbitrators, or of any two of them, should be made in Writing indented under their or any two of

PLEADINGS TO THE CASES.

of their Hands and Seals, ready to be delivered to the
 foresaid Parties in difference requiring the same, at or in the
 then and now Dwelling-house of *John Chambers* Scriveners
 situate in *Lombard-street*, upon or before the said one and
 twentieth Day of *November*, as by the said Obligations, and
 the Conditions of the same, more fully appears: The said
Nicholas Cutler and *Michael* did award and order the afore-
 said *David Dubarry*, his Executors, Administrators or As-
 signs, on the Part of the foresaid *Jacob Derutter*, to pay
 or cause to be paid to the foresaid *Josiah*, his Executors
 Administrators or Assigns, the Sum of 345 *l.* 6 *s.* 10 *d.* of
 lawful Money of *England*, on or before the 2d Day of *Ja-*
nuary then next following; and they did further award and
 order that the foresaid *Josiah Bacon* and the foresaid *Da-*
vid Dubarry, on the Behalf of the foresaid *Jacob Derutter*
 upon the Payment of the foresaid Sum of Money, as be-
 fore is set forth, should sign, seal and lawfully execute and
 deliver to and for the Use of each of them, a good and
 sufficient Release of all and all Manner of Action and Actions
 Cause and Causes of Action, Suits, Debts, Accounts, Reck-
 onings, Sum and Sums of Money, Covenants, Contracts
 Promises, Trespasses, Damages, Bonds, Bills, Specialties
 Judgments, Extents, Executions, Strifes, Differences, Con-
 troversies, Matters, Claims and Demands whatsoever
 touching the said Accounts, as by the Award aforesaid ap-
 pears. And the said *Josiah* in Fact saith, that the Award
 aforesaid in Form aforesaid made afterwards, to wit, on the
 aforesaid one and twentieth Day of *November* in the Year
 aforesaid at *London* aforesaid in the Parish and Ward aforesaid,
 was delivered as well to the foresaid *Josiah* as to the
 aforesaid *David*, according to the Form and Effect
 of the Condition of the Writing obligatory aforesaid.
 And the said *Josiah* further saith, that although he the
 said *Josiah*, from the Time of making the Award aforesaid
 said until this Time, hath well and truly observed, per-
 formed and kept all and singular the Matters and Things
 in the Award aforesaid contained on the Part of him the
 said *Josiah* to be performed and fulfilled according to the
 Form and Effect of that Award; protesting also that the
 foresaid *David Dubarry* from the Time of making the said
 Award until this Time hath not observed, performed or ful-
 filled the Award aforesaid in any Thing on his Part to be
 performed and fulfilled, according to the Form and Effect
 of that Award, in Fact he the said *Josiah* saith, that the
 foresaid *David Dubarry* hath not paid or caused to be paid
 to the foresaid *Joseph* the foresaid Sum of 345 *l.* 6 *s.* 10 *d.*

Breach as-
 signed.

on or before the aforefaid fecond Day of *January*, which he then ought to have paid to him according to the Form and Effect of the Award aforefaid; and this he is ready to verify: Whereupon he prays Judgment and his Debt aforefaid, together with his Damages by occafion of the Detention of that Debt to be adjudged to him, &c.

Demurrer, and Joinder in Demurrer.

N. The Judgment was for the Defendant, chiefly for this Reason, *viz.* That the Submission is on Behalf of *Derutter*, and nothing is awarded to *Derutter*, for he has no Advantage of this Award, becaufe the Release is awarded to be made to *Dubarry to the Use of Dubarry*, fo that *Derutter* has no Benefit by it. — But *per Curiam*, it had been otherwife if the Award had been, that the Plaintiff fhould release to *Derutter* or to the Defendant for the Use of *Drutter*, or to the Defendant *Dubarry* generally, without faying to the Use of *Dubarry*; for then it might have been intended to the Use of *Derutter*, becaufe the Submission was on Behalf of *Derutter*. See the Report. And fee alfo the Cafe of *Caybill* againft *Fitzgerald*, *Eafter 17 Geo. 2. B. R.*

Pleas before the Lord the King at Weftminfter of the Term of Eafter in the eighth Year of the Reign of our Lord William the Third, now King of England, &c. Roll. 291.

Freeman and others againft Bernard and others. 1 Ld. Raym. 247.

London, (to wit) **B**E it remembered that heretofore, to wit, in the Term of Saint *Hilary* in the fixth Year of the Reign of our Lord *William* the Third, now King of *England &c.* before the fame Lord the King at *Weftminfter* came *Thomas Freeman* and *Thomas Haggar* by *Benjamin Mould* their Attorney, and brought into the Court of the faid Lord the King then there their certain Bill againft *Samuel Bernard* and *Thomas Rodbard* in the Custody of the Marshal &c. of a Plea of *Trespafs* upon the Cafe, &c. and there are Pledges of profecuting, to wit, *John Doe* and *Richard Roe*, which faid Bill follows in thefe Words, (to wit) *London, (to wit) Thomas Freeman* and *Thomas Haggar* complains of *Samuel Bernard* and *Thomas Rodbard*, being in the Custody of the Marshal of the *Marshalsea* of the Lord the King before the King himfelf, for that, to wit, that whereas on the 8th Day of *Auguft* in the Year of our Lord 1693, at *London*

Declaration upon an Agreement to deliver fix Bags of Hops before 25th of December.

PLEADINGS TO THE CASES.

Mutual Promises to perform the Agreement.

Breach in not delivering the Hops.

A 2d Count upon another Agreement in Writing.

don aforesaid, to wit, in the Parish of Saint Mary of the Arches in the Ward of Cheape, it was agreed between them the said *Thomas Freeman* and *Thomas Haggar* and the aforesaid *Samuel* and *Thomas Rodbard* in Manner and Form following, that is to say, that the aforesaid *Samuel Bernard* and *Thomas Rodbard* should deliver to the aforesaid *Thomas Freeman* and *Thomas Haggar* sixteen Bags of good new Hops of the then next Growth, good Brewers Ware, at thirty and four Shillings by the hundred Weight, and that they should be delivered on or before the 25th Day of *December* then next following; and thereupon in Consideration that the aforesaid *Thomas Freeman* and *Thomas Haggar* had paid to the aforesaid *Samuel* and *Thomas Rodbard* one Piece of Gold Coin called a Guinea of lawful Money of England in Part of Payment thereof, and then and there at the special Instance and Request of them the said *Samuel* and *Thomas Rodbard* had assumed upon themselves, and to them the said *Samuel* and *Thomas Rodbard* had faithfully promised to perform the Agreement aforesaid in all Things on the Part of them the said *Thomas Freeman* and *Thomas Haggar* to be performed or fulfilled according to the Form and Effect of the Agreement aforesaid, they the said *Samuel* and *Thomas Rodbard* assumed upon themselves and to the aforesaid *Thomas Freeman* and *Thomas Haggar* then and there faithfully promised that they the said *Samuel* and *Thomas Rodbard* would well and faithfully perform and fulfil the Agreement aforesaid in all Things on the Part of them the said *Samuel* and *Thomas Rodbard* to be performed or fulfilled: Nevertheless the aforesaid *Samuel* and *Thomas Rodbard* not at all regarding their Promise and Undertaking aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *Thomas Freeman* and *Thomas Haggar* in this Behalf, have not delivered the aforesaid sixteen Bags of Hops, or any Parcel thereof on or before the aforesaid 25th Day of *December* next following after the making of the Agreement aforesaid, or at any Time afterwards until this Time to them the said *Thomas Freeman* and *Thomas Haggar*, or to either of them, but have hitherto wholly refused, and as yet do refuse to deliver the same to them. And also whereas afterwards, to wit, on the aforesaid 8th Day of *August* in the Year of our Lord aforesaid at London aforesaid in the Parish and Ward aforesaid, a certain other Agreement was had and made in Writing between the aforesaid *Samuel* and *Thomas Rodbard* and them the said *Thomas Freeman* and *Thomas Haggar* in Form following, that is to say, That the aforesaid *Samuel* and *Thomas Rodbard* should deliver

liver to them the said *Thomas Freeman* and *Thomas Haggar*
 sixteen other Bags of good new Hops of the then next
 Growth, good Brewers Ware, at the Rate of 34 s. by the
 Hundred, and that they should be delivered upon or before
 the 25th Day of *December* then next following, which
 said written Agreement was left in the Hands of one *Tho-*
mas Ruck. And whereas afterwards, to wit, on the same
 eighth Day of *August* in the Year abovesaid at *London* a-
 foresaid in the Parish and Ward abovesaid, a certain Dis-
 course was had and moved between the abovesaid *Samuel* and
Thomas Rodbard and them the said *Thomas Freeman* and
Thomas Haggar of and concerning the Agreement afore-
 said last mentioned, and of and concerning the Delivery of
 two Loads of Hops to them the said *Thomas Freeman* and
Thomas Haggar to be made by the abovesaid *Samuel* and
Thomas Rodbard, and upon that Discourse between the a-
 foresaid *Samuel* and *Thomas Rodbard* and them the said
Thomas Freeman and *Thomas Haggar*, two other Loads of
 Hops were to be delivered according to the said Agreement
 so as afore set forth left in the Hands of the abovesaid *Tho-*
mas Ruck, and that they the said *Thomas Freeman* and *Tho-*
mas Haggar should accept the Hops abovesaid last mention-
 ed according to the abovesaid Agreement last before reci-
 ted; and thereupon in Consideration that they the said
Thomas Freeman and *Thomas Haggar* then and there at the
 special Instance and Request of the abovesaid *Samuel* and
Thomas Rodbard had paid to the abovesaid *Samuel* and *Tho-*
mas Rodbard one other Piece of Gold Coin called a *Gui-*
nea, of lawful Money of *England*, in Part of Payment for
 the same Hops last mentioned, and had assumed upon
 themselves, and to them the said *Samuel* and *Thomas Rod-*
bard then and there faithfully promised to perform the A-
 greement abovesaid in all Things on the Part of them the
 said *Thomas Freeman* and *Thomas Haggar* to be performed
 and fulfilled according to the Form and Effect of the A-
 greement abovesaid last mentioned, they the said *Samuel*
 and *Thomas Rodbard* assumed upon themselves, and to
 them the said *Thomas Freeman* and *Thomas Haggar* then
 and there faithfully promised that they the said *Samuel* and
Thomas Rodbard would well and faithfully perform and ful-
 fill the Agreement abovesaid last mentioned in all Things
 on the Part of them the said *Samuel* and *Thomas Rodbard* to
 be performed and fulfilled: Nevertheless the abovesaid *Sa-*
muel and *Thomas Rodbard* not at all regarding their Promises
 and Undertakings abovesaid last mentioned made in Form
 abovesaid, but contriving and fraudulently intending crafti-

A Colloquium
 touching the
 Agreement

Mutual Pro-
 mises.

PLEADINGS TO THE CASES.

ly and subtilly to deceive and defraud them the said *Thomas Freeman* and *Thomas Haggar* in this Behalf, have not delivered, nor hath either of them delivered the aforesaid two Loads of Hops last mentioned, or any Parcel thereof, to them the said *Thomas Freeman* and *Thomas Haggar*, or to either of them, on or before the aforesaid 25th Day of *December* next following after the making the Promise and Undertaking aforesaid last mentioned, or at any Time afterwards, but have hitherto altogether refused, and as yet do refuse to deliver the same to them, whereupon they the said *Thomas Freeman* and *Thomas Haggar* say that they are injured, and have sustained Damage to the Value of 200*l.* and thereupon they bring Suit, &c.

Imparlance.

And now at this Day, to wit, *Wednesday* next after fifteen Days of *Easter*, until which Day the aforesaid *Samuel* and *Thomas Rodbard* had leave to imparl to the Bill aforesaid, and then to answer, &c. before the Lord the King at *Westminster* come as well the aforesaid *Thomas Freeman* and *Thomas Haggar* by their Attorney aforesaid as the aforesaid *Samuel* and *Thomas Rodbard* by *John Bernard* their Attorney; and they the said *Samuel* and *Thomas Rodbard* defend the Force and Injury when, &c. and say that the aforesaid *Thomas Freeman* and *Thomas Haggar* ought not to have or maintain their Action aforesaid thereupon against them, because they say that after the making of the several Promises and Undertakings above in the Declaration aforesaid specified, to wit, on the second Day of *November* in the Year of our Lord 1694, at *London* aforesaid, to wit, at the Parish of the Blessed *Mary of the Arches* in the Ward of *Cheape* aforesaid, as well the aforesaid *Thomas Freeman* and *Thomas Haggar*, as the aforesaid *Samuel* and *Thomas Rodbard* did submit and put themselves to the Award, Order and Judgment of Sir *John Parsons*, Knt. and *Richard Hammond* Brewers, Arbitrators as well on the Part of the aforesaid *Thomas Freeman* and *Thomas Haggar*, as on the Part of them the said *Samuel* and *Thomas Rodbard* in differently named and chosen to arbitrate, order, adjudge and determine of and upon and concerning all and all Manner of Action and Actions, Cause and Causes of Action, Suits, Debts, Bonds, Bills, Specialties, Executions, Accounts, Sum and Sums of Money, Differences, Controversies, Trespasses, Damages, Claims and Demands whatsoever at any Time before then had, moved, commenced, prosecuted, done, promised, committed or depending in Suit, Controversy, Question or Demand by or between the aforesaid *Thomas Freeman* and *Thomas Haggar* and the aforesaid

A Submission
to an Award
pleaded in
Bar.

aforesaid *Samuel* and *Thomas Rodbard*, for or by reason of
 any Matter, Cause or Thing whatsoever, so that the afore-
 said Arbitrators should make and give their Award and De-
 termination of and concerning the Premises in Writing
 indented under their Hands and Seals, ready to be deliver-
 ed to the aforesaid *Thomas Freeman* and *Thomas Haggar*,
Samuel and *Thomas Rodbard*, or to either or any of them at
 or in the Mansion-house of *Tobias Winne* Scrivener, in the
 Street called *Bartholomew Lane* near the *Royal Exchange*
London, before the first Day of *December* then next follow-
 ing. And that afterwards, to wit, on the 29th Day of
November in the Year of our Lord 1694 aforesaid at the
 Mansion-house of the aforesaid *Tobias Winne* in the Street
 called *Bartholomew Lane* aforesaid, near the *Royal Exchange*
London, to wit, in the Parish of Saint *Bartholomew-Ex-*
change in the Ward of *Broad-street*, *London*, the aforesaid
John Parsons and *Richard Hammond* the Arbitrators afore-
 said, having taken upon themselves the Burthen of the Ar-
 bitration aforesaid by a certain Writing indented under the
 Hands and Seals of those Arbitrators, and ready to be de-
 livered to the aforesaid *Thomas Freeman* and *Thomas Hag-*
gar, *Samuel* and *Thomas Rodbard*, or to either or any of
 them, did arbitrate, make and give their Award and De-
 termination of and concerning the Premises, that the afore-
 said *Samuel* and *Thomas Rodbard*, and also the aforesaid
Thomas Freeman and *Thomas Haggar*, or the several respec-
 tive Executors and Administrators of the aforesaid *Samuel*
 and *Thomas Rodbard*, *Thomas Freeman* and *Thomas Haggar*
 should mutually sign and seal, and as their Act and Deed
 should deliver to and for the Use of each other, their Exe-
 cutors or Administrators respectively, full and sufficient
 general Releases and Discharges of all Actions, Suits, Ac-
 counts, Debts and Demands whatsoever in Law or Equity
 of or concerning the Premises to the said Arbitrators, as
 before set forth, in any Manner submitted. And the afore-
 said *Samuel* and *Thomas Rodbard* say that they, from the
 Time of making the said Award until this Time, were al-
 ways and still are ready to sign, seal, and as their Acts and
 Deeds to deliver to them the said *Thomas Freeman* and *Tho-*
mas Haggar such Releases and Discharges as by the afore-
 said Arbitrators are above awarded, if the aforesaid *Tho-*
mas Freeman and *Thomas Haggar* should or would be wil-
 ling to accept those Releases and Discharges of the afore-
 said *Samuel* and *Thomas Rodbard*; And this they are ready
 to verify: Whereupon they the said *Samuel* and *Thomas*
Rodbard pray Judgment if the aforesaid *Thomas Freeman*

PLEADINGS TO THE CASES.

and *Thomas Haggar* ought to have or maintain their Action afore said thereupon against them, &c.

To this the Plaintiffs demurred, and Defendants join in Demurrer.

N. B. *This Award of mutual Releases was held bad, because there was no Satisfaction awarded; and the Award has only ordered a Means to discharge the Action. See the Report of the Case.*

Pleas before our Lord the King at Westminster of the Term of the Holy Trinity in the ninth Year of the Reign of our Lord William the Third, now King of England, &c. Roll 359.

Vide form Vaughan. Moulton 3 Bing. N.C. 468.

Tuberville against Stamp. 1 Ld. Raym. 264.

Declaration on the Custom of the Realm for negligently keeping a Fire in the Defendant's Close, whereby the Plaintiff's Heath and Furze were burnt.

Dorsetshire, (to wit)

BE it remembered that heretofore, to wit, in the Term of Easter last past before our Lord the King at Westminster came *Thomas Tuberville* the younger Esq; by *Edward Lawrence* his Attorney, and brought into the Court of our said Lord the King then there his certain Bill against *John Stamp* Gent. in the Custody of the Marshal, &c. of a Plea of Trespass upon the Case; and there are Pledges of prosecuting, to wit, *John Doe* and *Richard Roe*; which said Bill followeth in these Words, to wit, *Dorsetshire, to wit, Thomas Tuberville* the younger Esq; complains of *John Stamp* Gent. being in the Custody of the Marshal of the Marshalsea of the Lord the King before the King himself, for that, to wit, That whereas according to the Law and Custom of this Realm of England hitherto used and approved every Man of the same Realm is bound to keep his Fire safely and securely by Day and by Night, least for want of the due keeping of such Fire any Damage in any Manner happen to any Person of the same Realm: And whereas the said *Thomas* on the 6th Day of April in the 9th Year of the Reign of our Lord William the Third now King of England, &c. was possessed of a certain Close of Heath lying and being in the Parish of *Stoke* in the County afore said; and also whereas the said *John* the same Day and Year above said was likewise possessed of a certain other Close of Heath next adjoining to the afore said Close of him; the said *Thomas* in the Parish and County afore said the said *John* on the Day and Year and at the Place afore said so negligently and improvidently kept his Fire in the

said Close of Heath of him the said *John*, that for want of the due keeping of the said Fire the Heath and Furzes of him the said *Thomas* to the Value of forty Pounds in the said Close of Heath of him the said *Thomas* then growing and being were burnt, to the great Damage of him the said *Thomas*, and contrary to the Custom aforesaid; whereupon he saith that he is injured, and hath sustained Damage to the Value of 40 l. and thereupon he brings Suit, &c.

And now here at this Day, to wit, *Friday* next after the Imparlance.

Morrow of the Holy *Trinity* in this same Term, until which Day the said *John* had leave to imparl to the said Bill and then to answer, &c. before the Lord the King at *Westminster* comes as well the said *Thomas*, by his Attorney aforesaid as the said *John* by *Samuel Brewster* his Attorney; and the said *John* defends the Force and Injury when, &c. and saith that he is not guilty thereof; and of this he puts himself upon the Country, and the aforesaid *Thomas* likewise, &c. Therefore let a Jury thereupon

come before the Lord the King at *Westminster* on *Wednesday* next after three Weeks of the Holy *Trinity*, and who neither, &c. to recognize, &c. because as well, &c. The same Day is given to the said Parties there, &c. Afterwards the Process being thereupon continued between the said Parties of the Plea aforesaid by the Jury being thereupon respited between them before the Lord the King at *Westminster* until *Saturday* next after three Weeks of Saint

Michael from thence next following, unless the Justices of the Lord the King, assigned to take the Assises in the County of *Dorset* on *Thursday* the 22d Day of *July* at *Dorchester* in the County aforesaid by Form of the Statute, &c. should before come for Default of Jurors, &c. At which Day before the Lord the King at *Westminster* cometh the said *Thomas Tuberville* the younger by his Attorney aforesaid, and the aforesaid Justices before whom, &c. have sent here their Record before them had in these Words, to wit, Afterwards on the Day and at the Place within contained, before *Edward Ward*, Knt. Chief Baron of the Exchequer of the Lord the King, and *Thomas Rokeby* Knt. one of the Justices of the Lord the King assigned to hold Pleas before the King himself, Justices of him the said Lord the King assigned to take the Assises in the County of *Dorset* by Form of the Statute, &c. came the within named *Thomas Tuberville* the younger by his Attorney within contained, and the within written *John Stamp* Gent. although solemnly required did not come, but made Default: Therefore let the Jury, whereof mention is within made,

Nisi prius.

Postea.

be

PLEADINGS TO THE CASES.

Tales.

Final Judgment.

Mercy.

be taken against him by Default ; and the Jurors of that Jury being called, some of them, to wit, *Thomas Notting*, *Henry Kelloway*, *Richard Hombourne*, *John Ford*, *David Haward*, *Mark Dowland*, *Henry Humber*, *James Squib*, *Robert Woolfrays* came, and are sworn upon that Jury ; and because the Rest of the Jurors of the same Jury did not appear, therefore others of the By-standers by the Sheriff of the County aforesaid being chosen for this Purpose at the Request of the said *Thomas Tuberville*, and by the Command of the Justices aforesaid are newly appointed, whose Names are affiled in the Panel within written according to the Form of the Statute in such Case lately made and provided : And the Jurors newly appointed, to wit, *John Warren*, *William Bussel* and *Nathaniel Payne* being called likewise came, who being chosen, tried and sworn together with the other Jurors aforesaid before for this Purpose impanelled and sworn to speak the Truth concerning the Matter within contained say upon their Oath, that the aforesaid *John Stamp* is guilty of the Premisses within written within laid to his Charge, as the said *Thomas Tuberville* within thereof complains against him ; and they assess the Damages of him the said *Thomas* by the Occasion within written, besides his Costs and Charges by him laid out about his Suit in this Behalf, to eighteen Pounds, and for those Costs and Charges to forty Shillings : Therefore it is considered that the aforesaid *Thomas Tuberville* do recover against the said *John Stamp* his Damages aforesaid by the Jury aforesaid in Form aforesaid assessed, and also eleven Pounds for his Costs and Charges to him the said *Thomas Tuberville* by the Court of the said Lord the King now here with his Assent adjudged of Increase ; which said Damages in the Whole in themselves amount to thirty-one Pounds, and the aforesaid *John* in Mercy &c.

Pleas inrolled before Sir George Treby Knt. and his Companions Justices of our Lord the King and Lady the Queen, of the Term of Saint Michael in the sixth Year of the Reign of the said Lord the King and Lady the Queen by the Grace of God of England, &c.

Error. C. B. *Quare Impedit.* Rolls 705, 706.

The King and Queen *against* the Bishop of Chester, Piers and Scrope. 1 *Ld. Raym.* 292.

Yorkshire, (to wit) **N***ICHOLAS* Bishop of *Chester, Richard Piers, Esq; and Richard Scrope* Clerk were summoned to answer to the Lord and Lady the now King and Queen of a Plea that they permit them the said King and Queen to present a fit Person to the Church of *Bedall* which is void and belongs to their Gift, &c. And whereupon Sir *Edward Ward* Knt. Attorney General of the said Lord and Lady the now King and Queen, who sues in this Behalf for the same Lord and Lady the King and Queen, saith for the same Lord and Lady the King and Queen, That the Lady *Elizabeth* late Queen of *England* was seised of the Advowson of the Church aforesaid, as of an Advowson in Gross by itself, as of Fee and Right, in Right of her Crown of *England*; and being so seised thereof, by her Letters Patent sealed under her Great Seal of *England*, bearing Date at *Westminster* in the County of *Middlesex* the 14th Day of *February* in the 12th Year of the Reign of the same late Queen, presented one *John Tymes* her Clerk to that Church being void, as by the Record of the Inrolment of the said Letters Patent remaining in the Court of Chancery of our said Lord and Lady the now King and Queen at *Westminster* aforesaid more fully appears; which said *John Tymes* upon the aforesaid Presentation of the aforesaid late Queen was admitted, instituted and inducted in the same, in the Time of Peace in the Time of the said late Queen; and the aforesaid late Queen being seised of the Advowson of the Church aforesaid as before is set forth, she the said late Queen afterwards at *Westminster* aforesaid died seised of such her Estate of and in the Advowson of the Church aforesaid as before is set forth; after the Death of which said late Queen the Advowson of the Church aforesaid descended to *James* the First late King of *England*, by which the aforesaid late King *James* the First was seised of the Advowson of the Church

Queen Eliz. seised in Fee of the Advowson in Gross of the Church of Bendall.
14th of February in the 12th Year of her Reign presented Tymes by her Letters Patent, who was admitted, &c.
The Queen died seised of the Advowson, which descended to James 1. who was seised in Fee.

PLEADINGS TO THE CASES.

The Church became void by the Death of *Tyms*. *James the 1st* presented *John Wilson* 13th of July Anno 19^o Regni,

who was admitted, &c.

James the 1st died seised and the Advowson descended to *Charles 1.*

The Church became void by Death of *Wilson*.

Charles 1st presented Dr. *Wickham*,

who was admitted, &c.

Church aforesaid, as of an Advowson in Gros by itself, as of Fee and Right, in Right of his Crown of *England*; and being so seised thereof, the Church aforesaid became void by the Death of the aforesaid *John Tyms*, by which he the said late King *James the First* by his Letters Patent sealed under his Great Seal of *England* bearing Date at *Westminster* aforesaid the 13th Day of *July* in the 19th Year of the Reign of the same late King *James the First of England*, &c. presented one *John Wilson* Doctor of Divinity his Clerk, to that Church so being void, as by the Record of the Inrolment of the said Letters Patent last mentioned in the aforesaid Court of Chancery of the said Lord and Lady the now King and Queen at *Westminster* aforesaid remaining more fully appears; which said *John Wilson* upon the Presentation of the aforesaid late King *James the First* was admitted, instituted and inducted in the same, in the Time of Peace in the Time of the said late King *James the First*; and the aforesaid late King *James the First* being seised of the Advowson of the Church aforesaid as before is set forth, the same late King afterwards at *Westminster* aforesaid died seised of such his Estate thereof, after the Death of which said late King *James the First* the Advowson of the Church aforesaid descended to *Charles the First* late King of *England* as Son and Heir of the late King *James the First*, by which the aforesaid late King *Charles the First* was seised of the Advowson of the Church aforesaid as of an Advowson in Gros by itself as of Fee and Right in Right of his Crown of *England*; and being so seised thereof, the Church aforesaid became void by the Death of the aforesaid *John Wilson*, by which the same late King *Charles the First* by his Letters Patent sealed under his Great Seal of *England* bearing Date at *Westminster* the 6th Day of *March* in the tenth Year of the Reign of the same late King *Charles the First* presented one *Henry Wickham* Doctor of Divinity his Clerk, to that Church so being void, as by the Record of the Inrolment of the said Letters Patent last mentioned in the aforesaid Court of Chancery of the said Lord and Lady the now King and Queen at *Westminster* remaining more fully appears; which said *Henry Wickham* upon the aforesaid Presentation of the aforesaid late King *Charles the First* was admitted, instituted and inducted in the same in the Time of Peace in the Time of the said late King *Charles the First*; and the aforesaid late King *Charles the First* being seised of the Advowson of the Church aforesaid as before is set forth, the Church

Church aforesaid became void by the Death of the aforesaid *Henry Wickham*, and that one *John Piers* Esq; to the same Church so being void, not having the Right of presenting to the same, but by usurping upon the late Lord King *Charles* the First, presented one *William Metcalfe* his Clerk, who upon the Presentation of the aforesaid *John Piers* was admitted, instituted and inducted in the same; and afterwards the aforesaid late King *Charles* the First being seised of the Advowson of the Church aforesaid as before is set forth, at *Westminster* aforesaid died seised of such his Estate thereof as before is set forth; after whose Death the Advowson of the Church aforesaid descended to *Charles* the Second late King of *England* as Son and Heir of the aforesaid late King *Charles* the First, by which the aforesaid late King *Charles* the Second was seised of the Advowson of the Church aforesaid, as of an Advowson in Gross by itself as of Fee and Right in Right of his Crown of *England*; and being so seised thereof, the Church aforesaid became void by the Death of the aforesaid *William Metcalfe*, by which the aforesaid late King *Charles* the Second by his Letters Patent sealed under his Great Seal of *England* bearing Date at *Westminster* the 28th Day of *August* in the 12th Year of the Reign of the same late King *Charles* the Second presented one *Peter Samwayes* Doctor of Divinity his Clerk, to that Church so being void, as by the Record of the Inrolment of the said Letters Patent last mentioned in the aforesaid Court of Chancery of the said Lord and Lady the now King and Queen at *Westminster* aforesaid remaining more fully appears; which said *Peter Samwayes* upon the aforesaid Presentation of the aforesaid late King *Charles* the Second was admitted, instituted and inducted in the same, in the Time of Peace in the Time of the said late King *Charles* the Second; and the aforesaid late King *Charles* the Second being seised of the Advowson of the Church aforesaid as before is set forth, he the said late King *Charles* the Second afterwards at *Westminster* aforesaid died seised of such his Estate thereof, after whose Death the Advowson of the Church aforesaid descended to *James* the Second late King of *England* as Brother and Heir of the aforesaid late King *Charles* the Second, by which the aforesaid late King *James* the Second was seised of the Advowson of the Church aforesaid as of an Advowson in Gross by itself as of Fee and Right in Right of his Crown of *England*; which said late King *James* the Second being seised of the Advowson aforesaid as before is set forth, abdicated himself from the Government of this Kingdom, Realm,

The Church became void by the Death of Dr. *Wickham*, *John Piers* presented *Metcalfe* by Usurpation, who was admitted, &c. *Charles* 1st died seised, and the Advowson descended to *Charles* 2d. The Church became void by the Death of *Metcalfe*. *Charles* 2d presented Dr. *Samwayes*, who was admitted, &c. *Charles* 2d died seised, and the Advowson descended to *James* 2d. *James* 2d being seised abdicated the

by which the Advowson came to the now King and Queen, who are now seised thereof. And the Church became void by the Death of *Samwayes*, whereupon it belongs to the King and Queen to present.

Kingdom, by which the Advowson aforesaid came [devolved] to them the said Lord and Lady the now King and Queen, whereby they the said Lord and Lady the now King and Queen were and as yet are seised of the Advowson of the Church aforesaid as of an Advowson in Gros by itself as of Fee and Right in Right of their Crown of *England*; and being so seised thereof, the Church aforesaid became void by the Death of the aforesaid *Peter Samwayes*, whereupon it belongs to the aforesaid Lord and Lady the now King and Queen to present a fit Person to the Church aforesaid being so void; and the aforesaid Bishop, *Richard Piers* and *Richard Scrope* unjustly hinder them, whereupon the said Attorney General saith for the said Lord and Lady the now King and Queen that they the said King and Queen are injured, and have sustained Damage to the Value of 100*l.* and thereupon the said Attorney General who sues, &c. in this Behalf as aforesaid brings Suit, &c.

Entred of Trinity Term in the 10th Year of King William the Third. B. R. Roll. 102.

Pullein Esq; against Benson. 1 Ld. Raym. 349.

Debt upon a
Bail Bond.

Yorkshire, (to wit) **B**E it remembred that heretofore, to wit, in the Term of *Easter* last past before the Lord the King at *Westminster* came *Thomas Pullein Esq;* late Sheriff of the County aforesaid by *Charles Sanderson* his Attorney, and brought into the Court of the said Lord the King then there his certain Bill against *John Benson*, otherwise called *John Benson* of the same Yeoman, in Custody of the Marshal, &c. of a Plea of Debt; and there are Pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said Bill follows in these Words, (to wit) *Yorkshire*, (to wit) *Thomas Pullein Esq;* late Sheriff of the County aforesaid complains of *John Benson*, otherwise called *John Benson* of the same Yeoman, being in the Custody of the Marshal of the *Marshalsea* of the Lord the King before the King himself, of a Plea that he render to him forty Pounds which he oweth to him and unjustly detains, for that, to wit, That whereas the aforesaid *John* on the 20th Day of *November* in the 9th Year of the Reign of the Lord *William* the Third now King of *England*, &c. at *Barnsley* in the County aforesaid, by his certain Writing obligatory sealed with the Seal of him the said *John*, and to the Court of the said Lord the King now here sheweth

the Date whereof is the same Day and Year, acknowledged himself to be held and firmly bound to him the said *Thomas*, by the Name of *Thomas Pullein* Esq; Sheriff of the County aforesaid in the aforesaid 40*l.* to be paid to him the said *Thomas* when he should be thereunto requested: Nevertheless the aforesaid *John*, although often requested, &c. hath not yet paid to him the said *Thomas Pullein* the aforesaid 40*l.* but to pay the same to him hath hitherto altogether denied, and as yet doth deny, to the Damage of him the said *Thomas Pullein* of ten Pounds, and thereupon he brings Suit, &c.

And now at this Day, to wit, *Friday* next after the Mor- Imparlance.
row of the Holy *Trinity* in this same Term, until which

Day the aforesaid *John* had leave to imparl to the Bill aforesaid and then to answer, &c. before the Lord the King at *Westminster* cometh as well the aforesaid *Thomas* by his Attorney aforesaid as the aforesaid *John* by *William Manlove* his Attorney; and the said *John* defends the Force and Injury when, &c. and prays Oyer of the Writing aforesaid, and it is read to him, &c. he also prays Oyer of the Con-

Oyer of the
Bond.

dition of the said Writing, and it is read to him in these Words, (to wit) The Condition of this Obligation is such, that if the above bounden *William Benson* do appear before the Lord the King at *Westminster* on *Monday* next after fifteen Days of Saint *Martin* to answer to *John Brooke* Gent. of a certain Plea of Trespass, and also to a Bill of him the said *John* against the aforesaid *William* for twelve Pounds of Debt, that then this present Obligation shall be void, or else shall stand and remain in its full Strength, Force and Virtue; which being read and heard, he the said *John* saith that he ought not to be charged with the Debt aforesaid by Virtue of the aforesaid Writing, because he says that by a certain Act made in the Parliament of *Henry* the Sixth late King of *England*, holden at *Westminster* in the County of *Middlesex* on the 25th Day of *February* in the 23d Year of his Reign, of the Consideration of the King concerning the great Perjuries, Extortions and Oppressions which were, and had been, in this Realm by his Sheriffs, Under-Sheriffs, and their Clerks, Coroners, Stewards of Franchises, Bailiffs, and Keepers of Prisons, and other Officers in divers Counties of this Realm, it is ordained and was enacted by the Authority of the same Parliament, (among other Things) That the said Sheriffs, and all other Officers and Ministers aforesaid, should let out of Prison all Manner of Persons by them or any of them arrested, or being in their Custody by Force of any Writ, Bill or Warrant,

The St. of
23 Hen. 6. c.
10. pleaded.

PLEADINGS TO THE CASES.

Averment,
that the Bail
Bond was ex-
ecuted after
the Return of
the Writ and
not before.

Warrant, in an Action Personal, or by Cause of Indictment of Trespasses, upon reasonable Surety of sufficient Persons, having sufficient within the Counties where such Persons should be so let to Bail, or Mainprise, to keep their Days in such Places as the said Writs, Bills or Warrants should require, (such Person or Persons which were or should be in their Ward by Condemnation, Execution, *Capias Utlagatum*, or Excommunication, Surety of the Peace, and all such Persons as were or should be committed to Ward by special Commandment of any Justices, and Vagabonds refusing to serve according to the Form of the Statute of Labourers only except) and that no Sheriff, nor any of the Officers or Ministers aforesaid should take, or cause to be taken, or make any Obligation for any Cause aforesaid, or by Colour of their Office, but only to themselves, of any Person, nor by any Person which should be in their Ward by the Course of the Law, but by the Name of their Office, and upon Condition written, that the said Prisoners should appear at the Day in the said Writ, Bill or Warrant, and in such Places as the said Writs, Bills or Warrants should require; and if any of the said Sheriffs or other Officers or Ministers aforesaid should take any Obligation in other Form by Colour of their Offices, that it should be void, as by the same Act among other Things more fully appears. And the said *John* further saith that the Writing aforesaid was first delivered by him the said *John* on the 30th Day of *November* in the ninth Year aforesaid; and that the aforesaid *William Benson* in the Condition aforesaid above named at the said Time of the Delivery and Making of that Writing at *Barnsley* aforesaid was in Ward of the aforesaid *Thomas* as Sheriff of the aforesaid County of *York*, being taken and arrested by him the said *Thomas* by Pretext of a certain Writ of the Lord the King directed to him the said Sheriff, and returnable before the Lord the King at *Westminster* upon a certain Day of the Term of Saint *Michael* then last past, and he the said *William Benson* being so in Ward of the said *Thomas* as before is set forth, he the said *Thomas* on the said 30th Day of *November* in the ninth Year aforesaid and not before, took the Writing obligatory aforesaid with the Condition aforesaid, by Colour of his Office of Sheriff of the County aforesaid, of the said *William Benson*, and of him the said *John* as his Surety, contrary to the Form of the Statute aforesaid, to wit, at *Barnsley* aforesaid, and so that Writing by Force of the said

said Statute was, and is void and of no Effect in Law; * and this he is ready to verify: Whereupon he prays Judgment if he ought to be charged with the Debt aforesaid by Virtue of the Writing aforesaid, &c. *L. Agar.*

And the aforesaid *Thomas* saith that he by any Thing Demurrer. by the aforesaid *John Benson* above in pleading alledged ought not to be barred from having his said Action thereupon against him the said *John*, because he saith that the Plea aforesaid by him the said *John* in Manner and Form aforesaid above pleaded, and the Matter therein contained, are not sufficient in Law to bar him the said *Thomas* from having his Action aforesaid thereupon against the aforesaid *John*; to which said Plea he the said *Thomas* hath no Necessity, nor is he bound by the Law of the Land in any Manner to answer, and this he is ready to verify: Wherefore for want of a sufficient Answer in this Behalf, he the said *Thomas* prays Judgment and his Debt aforesaid, together with his Damages by occasion of the Detention of that Debt, to be adjudged to him; and for Cause of Demurrer in Law upon that Plea, he the said *Thomas* according to the Form of the Statute in such Case lately made and provided, shews and demonstrates to the Court here these Causes following, (that is to say) That the Plea aforesaid is uncertain, double, and wants Form, and doth not answer the Declaration of the aforesaid *Thomas*.

E. Northey.

And the aforesaid *John* saith that the Plea aforesaid by Joinder in Demurrer. him the said *John* in Manner and Form aforesaid above pleaded, and the Matter therein contained, are good and sufficient in Law to bar him the said *Thomas* from having his said Action thereupon against the aforesaid *John*; which said Plea, and the Matter therein contained, he the said

* *N B.* The Plaintiff declared on a Bond dated the 20th of *November*; the Defendant says it was first delivered by him on the 30th of *November*, and not before; he ought to have concluded with a Traverse in this Manner, viz. "Without this, that the aforesaid Writing was delivered by him the said *John* on the 20th Day of *November* in the ninth Year above-said, as the aforesaid *Thomas* above declares against him, or at any Time before the said 30th Day of *November* in the Year above-said; and this he is ready to verify, &c." And for want of this Traverse the Court held the Plea ill, and gave Judgment for the Plaintiff. See the Report.

John

PLEADINGS TO THE CASES.

*Curia advert-
sare vult.*

John is ready to verify and prove, as the Court, &c. And because the said *Thomas* doth not answer to that Plea, nor hath hitherto in any Manner denied it, he the said *John* as before prays Judgment if he ought to be charged with the Debt aforesaid by Virtue of the Writing aforesaid, &c. But because the Court of the said Lord the King now here is not yet advised of giving their Judgment of and upon their Premises, Day thereupon is given to the Parties aforesaid before the Lord the King at *Westminster* until—next after——for hearing their Judgment of and upon the Premises, for that the Court of the said Lord the King now here thereupon are not yet, &c.

Pleas before our Lord the King at Westminster of the Term of the Holy Trinity in the tenth Year of the Reign of our Lord William the Third, now King of England, &c. Roll 763.

Johnson against Long. 1 Ld. Raym. 370.

Declaration in
Case for a
Nuisance.

Possession al-
leged of a
Workhouse
wherein was a
Window
Time out of
Mind.

Somersetshire, (to wit) **B**E it remembered that heretofore, to wit, in the Term of *Saint Michael* last past before the Lord the King at *Westminster* came *Timothy Johnson* by *Philip Hodges* his Attorney, and brought into the Court of our said Lord the King then there his certain Bill against *John Long* in the Custody of the Marshal, &c. of a Plea of Trespass upon the Case; and there are Pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said Bill followeth in these Words, (to wit) *Somersetshire*, (to wit) *Timothy Johnson* complains of *John Long*, being in the Custody of the Marshal of the *Marshalsea* of the Lord the now King before the King himself, for that, to wit, That whereas the said *Timothy* on the 21st Day of *April* in the eighth Year of the Reign of our Lord *William* the Third now King of *England* &c. and always afterwards until this Time hath been possessed, and as yet is possessed of a certain antient Workhouse, situate and being in the Parish of *Whatley* in the County aforesaid, in which said Workhouse on the same 21st Day of *April* in the eighth Year aforesaid there was and from Time whereof the Memory of Man is not to the contrary there hath been a certain antient Window in the West Part of the same Workhouse, through which a very wholesome Air and chearing Light on the same 21st Day of *April* in the eighth Year aforesaid and for all the Time aforesaid entred and were brought in, and used and were accustomed

accustomed to enter and be brought in, to the great Profit and Advantage of the Occupiers of the said Workhouse:

And whereas the said *John* on the twenty-first Day of *April* That Defendant is possessed of a Parcel of Land contiguous to the Workhouse, in the eighth Year abovesaid and always afterwards until this Time hath been possessed, and as yet is possessed of a certain Parcel of Land with the Appurtenances situate, lying and being in the Parish of *Whatley* abovesaid in the County abovesaid lying contiguous to the Workhouse abovesaid; and being so possessed thereof, he the said *John* contriving and fraudulently intending very much to aggrieve and oppress the said *Timothy*, and wholly to deprive him the said *Timothy* of the Air and Light which used and were accustomed to enter and be brought in through the Window abovesaid into the said Shop, and to stop up the Workhouse abovesaid in horrid Darkness, and wholly to deprive the said *Timothy* of the Use and Profit of the said Workhouse, on the 21st Day of *April* in the eighth Year abovesaid at *Whatley* abovesaid in the County abovesaid newly erected and built a certain Wall upon the said Parcel of Land of him the said *John* so near to the said Workhouse that by the same Erection of the Wall abovesaid the said Window on the said 21st Day of *April* and always afterwards until the Day of exhibiting this Bill, to wit, the 23d Day of *October* in the ninth Year of the Reign of our said Lord the now King was very much stopped up and darkened, whereby the said *Timothy* hath totally lost and been deprived of the whole Profit and Easement of the said Window, and the Comfort and Wholsomeness of the Air and Light which used to enter and be brought in and upon the same Window as before is set forth, and the whole Use and Profit of the said Workhouse from the said 21st Day of *April* in the eighth Year abovesaid until the said 23d Day of *October* in the ninth Year abovesaid; whereupon the said *Timothy* saith that he is injured, and hath sustained Damage to the Value of forty Pounds, and thereupon he brings Suit, &c.

And now at this Day, to wit, *Friday* next after the Morrow of the Holy *Trinity* in this same Term, until which Day the said *John Long* had leave to imparl to the said Bill and then to answer &c. before our Lord the King at *Westminster* comes as well the said *Timothy* by his Attorney abovesaid as the said *John* by *James Long* his Attorney; and the said *John* defends the Force and Injury when &c. and saith that the said *Timothy* ought not to have or maintain his said Action thereupon against him, because he saith that the abovesaid *Timothy* heretofore, to wit, in the Term of

and built a Wall there which stopped the Light and Air from entering into the said Workhouse through the Window,

whereby Plaintiff lost the Profit of his said Workhouse.

Impar lance.

Plea in Bar that Plaintiff hath recovered in another Action for the very same *Easter* Nufance.

PLEADINGS TO THE CASES.

Easter in the eighth Year of the Reign of our Lord the now King in the Court of him the said Lord the King before the King himself here, to wit, at *Westminster* in the County of *Middlesex* impleaded the same *John Long* in a certain Plea of Trespass upon the Case, declaring against him, That whereas he the said *Timothy* on the tenth Day of *October* in the seventh Year of the Reign of our Lord the now King and always afterwards until that Time had been and then was possessed of a certain antient Workhouse situate and being in the Parish of *Whatley* in the County aforesaid, and that in that Workhouse on the same tenth Day of *October* in the seventh Year aforesaid, and from Time whereof the Memory of Man was not then to the contrary, there was a certain antient Window in the West Part of the said Workhouse, and that through the same Window a very wholesome Air and chearing Light on the same tenth Day of *October* in the seventh Year aforesaid and for all the Time aforesaid entred and were brought in and used and were accustomed to enter and be brought in, to the great Profit and Advantage of the Occupiers of the said Workhouse: And that the said *John* on the said tenth Day of *October* in the seventh Year aforesaid and always afterwards until that Time had been possessed and then was possessed of a certain Parcel of Land with the Appurtenances situate, lying and being in the Parish of *Whatley* aforesaid in the County aforesaid, lying contiguous to the Workhouse aforesaid; and being so possessed thereof, he the said *John* contriving and fraudulently intending very much to aggrieve and oppress the said *Timothy*, and wholly to deprive him the said *Timothy* of the Air and Light which used and were accustomed to enter and be brought in through the Window aforesaid into the said Workhouse, and to stop up the Workhouse aforesaid in horrid Darkness, and wholly to deprive the said *Timothy* of the Use and Profit of the said Workhouse, on the said tenth Day of *October* in the seventh Year aforesaid at *Whatley* aforesaid in the County aforesaid newly erected and built a certain Wall upon the said Parcel of Land of him the said *John* so near to the said Workhouse that by the same Erection of the Wall aforesaid the said Window on the said tenth Day of *October* and always afterwards until the 20th Day of *April* in the 8th Year of the Reign of our Lord the now King was very much stopped up and darkened, whereby the said *Timothy* had totally lost and been deprived of the whole Profit and Easement of the said Window,

Window, and the Comfort and Wholsomness of the Air and Light which used to enter and be brought in and upon the same Window, and the whole Use and Profit of the said Workhouse, from the said tenth Day of *October* in the seventh Year abovesaid until the said 20th Day of *April* in the 8th Year abovesaid, whereupon the said *Timothy* then said that he was injured, and had sustained Damage to the Value of forty Pounds, and thereupon he then brought Suit, &c. And in such Manner it was thereupon proceeded in the same Court here, to wit, at *Westminster* aforesaid, (after that he the said *John* had there pleaded thereunto that he was not guilty thereof, and by a certain Jury of the Country had been found guilty thereof) That afterwards, to wit, in the Term of Saint *Michael* then next following it was considered by the same Court here that the said *Timothy* should recover against the said *John* fourteen Pounds for his Damages which he had sustained, as well by occasion of the Premises in the same Record mentioned, as for his Costs and Charges by him laid out about his Suit in that Behalf, as by the Record thereof in the same Court here, to wit, at *Westminster* aforesaid remaining more fully appears. And the said *John* further saith, that the aforesaid Workhouse Window, Erection and Building of the Wall aforesaid in the said recited Record mentioned, and the aforesaid Workhouse Window, Erection and Building of the Wall aforesaid in the Bill of him the said *Timothy* against him the said *John Long* now exhibited above mentioned and expressed, are the same Workhouse Window, Erection and Building of the Wall, and not others nor different; and that the aforesaid *Timothy* named Plaintiff in the said recited Record, and the said *Timothy* the above named Plaintiff in the Bill aforesaid are one and the same Person, and not another nor different; and that the aforesaid *John* named Defendant in the said recited Record, and the aforesaid *John* the above named Defendant in the Bill aforesaid are one and the same Person and not another nor different; and this he is ready to verify: Whereupon he prays Judgment if the aforesaid *Timothy* ought to have or maintain his said Action against him, &c.

Judgment in the former Action.

Averment of the Identity of of the Nul-
lance, &c.

And the said *Timothy* saith that he by any Thing by the said *John* above in pleading alledged ought not to be barred from having his said Action thereupon against him the said *John*, because he saith that the Plea aforesaid by the said *John* in Manner and Form aforesaid above pleaded, and the Matter therein contained, are not sufficient in Law to

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bar

PLEADINGS TO THE CASES.

bar him the said *Timothy* from having his Action thereupon against the said *John*; to which said Plea he the said *Timothy* hath no Necessity, neither is he bound by the Law of the Land in any Manner to answer; and this he is ready to verify: Wherefore for want of a sufficient Answer in this Behalf, the said *Timothy* prays Judgment and his Damages by occasion of the Premisses aforesaid to be adjudged to him, &c.

Joinder in
Demurrer.

Curia advisare vult.

Judgment for
the Defen-
dant.

Mercy.

And the aforesaid *John* saith that the said Plea of him the said *John* in Manner and Form aforesaid above pleaded, and the Matter therein contained, are good and sufficient in Law to bar the said *Timothy* from having his said Action thereupon against him the said *John*; which said Plea, and the Matter therein contained, he the said *John* is ready to verify and prove, as the Court &c. And because the said *Timothy* doth not answer to that Plea, nor hath hitherto in any Manner denied it, he the said *John* as before prays Judgment, and that the said *Timothy* may be barred from having his said Action against him the said *John*, &c. But because the said Court of the said Lord the now King here are not yet advised of giving their Judgment of and upon the Premisses, Day is thereupon given to the Parties aforesaid before the Lord the King at *Westminster* until *Wednesday* next after eight Days of Saint *Martin* to hear their Judgment thereupon, for that the Court of the said Lord the King now here is not yet thereupon, &c. At which Day before the Lord the King at *Westminster* come the said Parties by their Attornies aforesaid, whereupon all and singular the Premisses being seen, and by the Court of the Lord the now King more fully understood, and mature Deliberation being thereupon had, it seems to the Court of the Lord the King here that the said Plea by the said *John* in Manner and Form aforesaid above pleaded, and the Matter therein contained, are good and sufficient in Law to bar him the said *Timothy* from having his said Action against the said *John*, therefore it is considered that the said *Timothy* take nothing by his said Bill, but that he for his false Complaint be thereupon in Mercy, &c. And the said *John* may thereupon go without Day, &c. And it is further considered that the said *John* do recover against the said *Timothy* six Pounds and ten Shillings for his Costs and Charges sustained in and about his Defence in this Behalf adjudged by the Court of the said Lord the King now here to him the said *John* by his Assent according to the Form of the Statute in such Case made and provided, and that the said *John* have Execution thereof, &c.

Entree

Entred of Trinity Term in the 9th Year of King William the Third. B. R. Roll 724.

Savill against Roberts. 1 Ld. Raym. 374.

THE Lord the King hath sent to his beloved and faithful George Treby, Knt. his Chief Justice of the Bench his Writ close in these Words, (to wit) *William the Third* by the Grace of God of *England, Scotland, France and Ireland* King, Defender of the Faith, &c. To his beloved and faithful George Treby, Knt. his Chief Justice of the Bench greeting: Forasmuch as in the Record and Process, and also in the giving of Judgment of the Plaint which was in our Court before you and your Companions, our Justices of the Bench aforesaid, by our Writ between *James Roberts* and *William Savill* late of *Mexbrough* in the County of *York* Esq; of a certain Trespass upon the Case done by the said *William* to him the said *James*, as it is said, manifest Error hath intervened, to the great Damage of him the said *William*, as by his Complaint we are informed: We willing that the Error (if any hath been) be in due Manner corrected, and full and speedy Justice be done to the Parties aforesaid in this Behalf, do command you that if Judgment be given thereupon, then that you send to us distinctly and plainly under your Seal the Record and Process aforesaid, with all Things touching the same, and this Writ, so that we may have them from the Day of *Easter* in fifteen Days wheresoever we shall then be in *England*, that inspecting the Record and Process aforesaid we may cause further to be done thereupon for the correcting that Error, that which of Right and according to the Law and Custom of our Kingdom of *England* shall be meet to be done. Witness ourself at *Westminster* the 16th Day of *February* in the 9th Year of our Reign. *Hungerford.*

The Answer of George Treby Knt. Chief Justice within The Return named. thereof.

The Record and Process of the Plaint whereof Mention is within made, with all Things touching the same, I send before the Lord the King wheresoever &c. at the Day within contained, in a certain Record to this Writ annexed, as I am within commanded. *George Treby.*

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Pleas inrolled at Westminster before George Treby Knt. and his Companions Justices of our Lord the King of the Bench of the Term of the Holy Trinity in the 8th Year of the Reign of our Lord William the Third by the Grace of God of England, Scotland, France and Ireland King, Defender of the Faith, &c. Roll 1737.

Declaration
for malicious-
ly and falsely
procuring a
Man to be in-
dicted for a
Riot.

Yorkshire, (to wit) *William Savill* late of *Mexbrough* in the County aforesaid Esq; was attached to answer to *James Roberts* of a Plea of Trespass upon the Case, &c. And whereupon the said *James* by *Robert Darwent* his Attorney complains that the aforesaid *William Savill* contriving and wickedly and maliciously intending unjustly to aggrieve him the said *James*, and to weary, oppress and damnify him very much with various Labours and Expences, by Pretence and Colour of Justice, and Process of Law, without a reasonable Cause, and of his Malice aforethought, at *Barnsley* in the County aforesaid, at the General Quarter-Session of the Peace of the Lord the King holden by Adjournment there for the West Riding in the County aforesaid on the 15th Day of *October* in the 7th Year of the Reign of the Lord the now King, before *George Cooke* Bart. *Michael Wentworth*, *William Lowther* Knights, *Robert Monkton*, *Godfrey Boswile*, *Richard Nettleton*, *John Bradshawe*, *Nonus Parker* Esquires, and other Justices of the said Lord the King assigned to keep the Peace in the West Riding in the County aforesaid, and also to hear and determine divers Felonies, Trespases and other Misdemeanors committed in the West Riding of the County aforesaid, &c. him the said *James Roberts* and (certain Persons) *Richard Offerton* Gent. *William Shirtcliffe*, *Thomas Middleton*, *Samuel Roberts*, *Ellen Roberts* Widow, *Thomas Roberts*, *Richard Holden*, *Thomas Sheepshanke*, *Anthony Hendley*, *Jonathan Crosse*, *George Sheepshanke*, *Anthony Roberts*, *Benjamin Nicholson* and ——— his Wife, *George Littlewood*, *Joseph Dell* and *Jonathan White*, by the Names of *Richard Offerton* late of *Shirburgh* in the County aforesaid Gent. *William Shirtcliffe* late of the same Labourer, *Thomas Middleton* late of *Mexbrough* in the County aforesaid Labourer, *Samuel Roberts* late of *Beneby* in the County aforesaid Labourer, the aforesaid *James Roberts* late of the same Labourer, *Ellen Roberts* late of the same Widow, *Thomas Roberts* late of the same Labourer, *Jonathan Crosse* late of *Shirburgh* in the County aforesaid Labourer, *George Sheepshanke* late of *Beneby* aforesaid Labourer,

bourer, *Anthony Roberts* late of the same Labourer, *Benjamin Nicholson* late of the same Labourer, and — his Wife, *George Littlewood* late of *Sbirburgh* afore said Labourer, *Joseph Dell* late of *Beneby* afore said Labourer, and *Jonatban White* late of the same Labourer, for that they on the second Day of *October* in the 7th Year of the Reign of the Lord *William* the Third by the Grace of God now King of *England*, &c. with Force and Arms at *Beneby* afore said in the West Riding of the County afore said riotously, routously, unlawfully and unjustly did assemble themselves and meet together, and did then and there riotously and routously obstruct [stop up] with certain Posts, Pales and Rails, a certain Way belonging to the afore said *William Savill* for the carrying of the Tithes of Corn and Hay of him the said *William Savill* from the Village of *Beneby* afore said to the Village of *Mexbrough* afore said, so that he the said *William Savill* could not enjoy the same Way as before, and did other Wrongs to him the said *William Savill*, to the great Damage of him the said *William*, and against the Peace of the said Lord the now King, his Crown and Dignity, and also against the Form of the Statute, &c. did falsly and maliciously cause and procure to be indicted, and that Indictment against him the said *James Roberts* did falsly and maliciously prosecute and cause to be prosecuted, until he the said *James Roberts* afterwards, to wit, at the General Quarter Session of the Peace of the said Lord the King holden in and for the West Riding of the County afore said at *Pontefract*, on the 21st Day of *April* in the 8th Year of the Reign of our Lord *William* the Third by the Grace of God now King of *England*, &c. before *Henry Viscount Downe*, *Lionell Pilkington* Bart. and others their Fellows Justices of the said Lord the King assigned to keep the Peace in the West Riding in the County afore said, and also to hear and determine divers Felonies, Trespasses and other Misdemeanors committed in the West Riding of the County afore said, was acquitted thereof in due Manner according to the Law and Custom of this Kingdom of *England*, (and then the Plaintiff lays it upon another Count for procuring him to be indicted by another Indictment for a Riot committed in the same Manner the third of *October*, &c.) by Pretext of which said Premises he the said *James Roberts* not only in his good Name, Fame, Credit and Esteem which he before enjoyed is very greatly hurt and very much hindered in doing divers honest and lawful Busineses, but also he the said *James* hath been ob-

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liged and compelled to undergo grievous and hard Labours, and to expend and lay out divers Sums of Money for his Acquittal aforesaid and for his Discharge in this Behalf, to the Damage of him the said *James Roberts* of 20*l.* and thereupon he brings Suit, &c.

Plea, Not
Guilty.

Venire awarded.

Postea.

And the aforesaid *William Savill* by *William Aislaby* his Attorney comes and defends the Force and Injury when, &c. and saith that he is in no wise guilty of the Premises aforesaid above laid to his Charge, as the aforesaid *James* above complains against him; and of this he puts himself upon the Country, and the aforesaid *James* likewise; therefore the Sheriff is commanded that he cause to come here from the Day of the Holy *Trinity* in three Weeks twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. At which Day the Jury between the Parties of the Plea aforesaid was thereupon respited between them here until this Day, to wit, from the Day of Saint *Michael* in three Weeks then next following, unless the Justices of the Lord the King assigned to take the Assises in the County aforesaid by Form of the Statute, &c. should before come on *Saturday* the 25th Day of *July* next past at the Castle of *York* in the County aforesaid, &c. And now here at this Day cometh the aforesaid *James* by his Attorney aforesaid, and the aforesaid Justices of Assise before whom, &c. have sent here their Record in these Words: Afterwards on the Day and at the Place within contained before *Edward Ward* Knt. Chief Baron of the Exchequer of the Lord the King, and *John Turton*, Knt. one of the Justices of the said Lord the King assigned to hold Pleas before the King himself, Justices of the said King assigned to take the Assises in the County of *York* by Form of the Statute &c. came the within named *James Roberts* by his Attorney within contained, and the within written *William Savill*, although solemnly called, came not, but made Default, therefore let the Jury whereof Mention is within made be taken against him by Default; and the Jurors of that Jury being called, some of them, to wit, *Samuel Midgeley*, *William Metcalfe*, *Ralph Marsden*, *Abraham Haigh*, *Robert Taylor*, *Richard Burton*, *Christopher Sbaw*, *John Telborne* and *John Billing* came and are sworn upon that Jury: And because the Rest of the Jurors of the same Jury did not appear, therefore others of the By-standers, chosen by the Sheriff of the County aforesaid for this Purpose at the Request of the aforesaid *James Roberts* and by the Command of the Justices aforesaid are newly appointed.

pointed, whose Names are affiled in the Panel within writ-*Tales.*
 ten, according to the Form of the Statute in such Case
 lately made and provided; and the Jurors so newly ap-
 pointed, to wit, *Thomas Ward, William Pulleine* and *John*
Priest being called likewise came, who being chosen, tri-
 ed and sworn to speak the Truth concerning the Matters
 within contained together with the other Jurors aforesaid
 before impanelled and sworn, say upon their Oath that the
 aforesaid *William Savill* is guilty of the Premises within
 laid to his Charge in Manner and Form as the aforesaid
James within complains against him, and they assess the
 Damages of him the said *James* by occasion of the Mat-
 ters within written, besides his Costs and Charges by him
 laid out about his Suit in this Behalf, to eleven Pounds,
 and for those Costs and Charges to 40 Shillings: And be-*Curia advi-*
 cause the Justices here will advise themselves of and con-*sare vult.*
 cerning the Premises before they give Judgment thereup-
 on, Day is given to the aforesaid *James* here until in eight
 Days of *Saint Hilary* for hearing their Judgment thereof,
 for that they the said Justices here are not yet, &c. At
 which Day here cometh the aforesaid *James* by his Attor-
 ney aforesaid; and hereupon the Premises being seen, and
 by the Justices here more fully understood, it is considered Judgment.
 that the aforesaid *James* do recover against the aforesaid
William his Damages aforesaid to 13 *l.* by the Jurors a-
 foresaid in Form aforesaid assessed, and also 17 *l.* adjudged
 by the Court here to him the said *James* by way of In-
 crease of his Costs and Charges aforesaid at his Request;
 which said Damages in the Whole in themselves amount
 to 30 Pounds; and the aforesaid *William* in Mercy, &c. Mercy.

*Pleas before the Lord the King at Westminster of the Term
 of the Holy Trinity in the ninth Year of the Reign of
 William the Third, now King of England, &c.*

Harrison against Cage and Wife. 1 Ld. Raym. 386.

Cambridgeshire, (to wit) **B**E it remembered that here-*Case against a*
 tofore, to wit, in the Term *Husband and*
 of *Easter* in the ninth Year of the Reign of our Lord *Wife upon*
William the Third now King of *England, &c.* before the Lord *Promise of*
 the King at *Westminster* came *Henry Harrison, Gent.* by *Marriage by*
Michael Johnson his Attorney, and brought into the Court *her while*
 of the said Lord the King then there his certain Bill a-*Sole.*
 gainst *Adlard Cage Gent. and Elizabeth* his Wife in the
 Custody of the Marshal &c. of a Plea of Trespass upon
 the

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the Case; and there are Pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said Bill followeth in these Words, to wit, *Cambridgeshire*, to wit, *Henry Harrison* Gent. complains of *Adlard Cage* Gent. and *Elizabeth* his Wife, being in the Custody of the Marshal of the *Marshalsea* of the Lord the King before the King himself, for that, to wit, That whereas the aforesaid *Elizabeth* while she was Sole, to wit, on the first Day of *April* in the eighth Year of the Reign of our Lord *William* the Third, now King of *England*, &c. at *Borough-Green* in the County aforesaid (in Consideration that he the said *Henry* then and yet being a Bachelor and not married, at the special Instance and Request of her the said *Elizabeth*, then and there had agreed with the said *Elizabeth*, and had assumed upon himself and faithfully promised to her the said *Elizabeth* that he the said *Henry* would marry for his Wife the said *Elizabeth*) assumed upon herself, and to him the said *Henry* then and there faithfully promised that she the said *Elizabeth* would marry for her Husband him the said *Henry*: And although he the said *Henry* giving Faith to the Promise and Undertaking of the said *Elizabeth*, hath absolutely refused to contract Matrimony with any other Woman, and as yet is a Bachelor and not married, and always from the Time of making the Promise and Undertaking aforesaid (whilst the said *Elizabeth* was Sole) was ready, and hath often offered lawfully to marry the said *Elizabeth* for his Wife, to wit, at *Borough-green* aforesaid in the County aforesaid: Nevertheless the aforesaid *Elizabeth* whilst she was Sole, not at all regarding her Promise and Undertaking aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud him the said *Henry* in this Behalf, hath not married him the said *Henry* for her Husband (although to do this the said *Elizabeth* after the Promise and Undertaking aforesaid made, to wit, on the 29th Day of *April* in the eighth Year aforesaid and often before and afterwards at *Borough-Green* aforesaid in the County aforesaid was requested by him the said *Henry*) but hath absolutely refused to marry him for her Husband. And afterwards, to wit, on the first Day of *October* in the eighth Year aforesaid at *Borough-green* aforesaid in the County aforesaid married the aforesaid *Adlard* for her Husband, contrary to the said promise and Undertaking of her the said *Elizabeth*. And also whereas the aforesaid *Elizabeth* whilst she was Sole, to wit, on the first Day of *May* in the eighth Year aforesaid was indebted to him the said *Henry* in 300*l.* of lawful Money of *England*

Breach.

Request and Refusal, and marrying the Defendant.

Count for Money laid out for, and lent to the Wife while Sole.

for Money by him the said *Henry*, at the special Instance and Request of her the said *Elizabeth* and for the said *Elizabeth* (whilst she was Sole) before that Time paid and laid out, and for Money by her the said *Elizabeth* (whilst she was Sole) before that Time borrowed and received of the same *Henry*; and being so indebted, she the same *Elizabeth* (whilst she was Sole) the same Day and Year last mentioned at *Borough-green* aforesaid in the County aforesaid in Consideration thereof assumed upon herself, and to the said *Henry* then and there faithfully promised that she the said *Elizabeth* the said 300 *l.* to him the said *Henry* would well and faithfully pay and content: Nevertheless the afore-
Breach.
said *Elizabeth* whilst she was Sole, and the said *Adlard* and *Elizabeth* after the Marriage between them celebrated, not at all regarding the Promise and Undertaking of her the said *Elizabeth* aforesaid last mentioned, but contriving and fraudulently intending craftily and subtilly to deceive and defraud him the said *Henry* in this Behalf, the said 300 *l.* or any Part thereof (altho' often requested) have not nor hath either of them paid to him the said *Henry*, but to pay the same to him, or in any Manner to satisfy him for the same, they have wholly refused and yet do refuse, whereupon the said *Henry* saith that he is injured, and hath sustained Damage to the Value of 3000 *l.* and thereupon he brings Suit, &c.

And now here at this Day, to wit, *Wednesday* next after Imparlance, the Morrow of the Holy *Trinity* in this same Term, until which Day the aforesaid *Adlard* and *Elizabeth* had leave to imparl to the said Bill and then to answer &c. before the Lord the King at *Westminster* comes as well the said *Henry* by his Attorney aforesaid as the aforesaid *Adlard* and *Elizabeth* by *Richard Edwards* their Attorney; and the said *Adlard* and *Elizabeth* defend the Force and Injury when &c. *Non Assumpsit*
and say that the said *Elizabeth* did not take upon herself in
pleaded.
Manner and Form as the aforesaid *Henry* above complains against them; and of this they put themselves upon the Country, and the said *Henry* likewise: Therefore let a Jury come thereupon before the Lord the King at *Westminster* on *Wednesday* next after three Weeks of the Holy *Trinity*, and who neither, &c. to recognize, &c. because as well, &c. The same Day is given to the Parties aforesaid there, &c. Afterwards the Process being thereupon continued between the said Parties of the Plea aforesaid by the Jury being thereupon respited between them before the Lord the King at *Westminster* until *Monday* next after
three

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Poslea.

Verdict for
the Plaintiff.

Judgment.

Error brought
in the Exche-
quer Cham-
ber.

three Weeks of Saint *Michael* from thence next following, unless the Justices of the Lord the King assigned to take the Assises in the County aforesaid on *Thursday* the 11th Day of *August* at the Castle of *Cambridge* in the County aforesaid by Form of the Statute &c. should before come for want of Jurors, &c. At which Day before the Lord the King at *Westminster* cometh the said *Henry* by his Attorney aforesaid, and the aforesaid Justices before whom, &c. have sent here their Record had before them in these Words, to wit, Afterwards on the Day and at the Place within contained, before *Edward Ward* Knt. Chief Baron of the Exchequer of our Lord the King, and *Thomas Knight* Esq; for this Time associated to the said *Edward Ward*, and *Thomas Rokeby* Knt. one of the Justices of the said Lord the King assigned to hold Pleas before the King himself, Justices of him the said Lord the King assigned to take the Assises in the County of *Cambridge* by Form of the Statute, &c. the Presence of the said *Thomas Rokeby* not being expected, by Virtue of the Writ of the said Lord the King of *Si non omnes* came the within named *Henry Harrison* by his Attorney within contained, and the within written *Adlard Cage* and *Elizabeth* his Wife although solemnly required did not come, but made Default; therefore let the Jury whereof Mention is within made be taken against them by Default; upon which the Jurors of that Jury being called likewise came, who being chosen, tried and sworn to speak the Truth concerning the Matter within contained, say upon their Oath that the aforesaid *Elizabeth* assumed upon herself in Manner and Form as the aforesaid *Henry* within complains against the said *Adlard* and *Elizabeth*; and they assess the Damages of him the said *Henry* by occasion of the Not-performing of the Promises and Undertakings within specified, besides his Costs and Charges by him laid out about his Suit in this Behalf, to 400 *l.* and for those Costs and Charges to 40 *s.* Therefore it is considered that the aforesaid *Thomas Harrison* do recover against the aforesaid *Adlard* and *Elizabeth* his Wife his Damages aforesaid assessed by the Jury in Form aforesaid, and also 16 *l.* for his Costs and Charges aforesaid to him the said *Henry* by the Court of the said Lord the King now here with his Assent adjudged of Increase, which Damages in the Whole in themselves amount to 418 *l.* and the aforesaid *Adlard* and *Elizabeth* in Mercy, &c. Afterwards, to wit, on *Saturday* the 26th Day of *November* in the tenth Year of the Reign of our Lord *William* the Third

now

now King of England, &c. Transcripts of the Record and Process aforesaid between the Parties aforesaid of the Plea aforesaid, with all Things touching them, by Pretext of a certain Writ of the said Lord the King of correcting Errors, by the aforesaid *Adlard* and *Elizabeth* prosecuted in the Premises before the Justices of the said Lord the King of the Common Bench, and the Barons of the Exchequer of the said Lord the King of the Degree of the Coif in the Chamber of the Exchequer aforesaid, according to the Form of the Statute set forth in the Parliament of the Lady *Elizabeth* late Queen of England, &c. holden at *Westminster* the 23d Day of *November* in the 27th Year of her Reign, were transmitted from the said Court of the said Lord the King here before the King himself: And the aforesaid *Adlard* and *Elizabeth* appearing in the same Court of the Exchequer Chamber, assigned certain Matters for Error in the Record and Process aforesaid to be had for the Errors assigned. reversing and annulling the Judgment aforesaid; to which the aforesaid *Henry* likewise appearing in the same Court of the Exchequer Chamber aforesaid hath pleaded that neither in the Record and process aforesaid, nor in the giving of the Judgment aforesaid, was there any Thing erroneous. And afterwards, to wit, on *Tuesday* the 27th Day of *June* in the 11th Year of the Reign of our Lord *William* the Third now King of England, &c. as well the Record and Process aforesaid, and the Judgment given upon the same, as the aforesaid Causes by the said *Adlard* and *Elizabeth* assigned and alledged for Error being seen, and by the Court of the Exchequer Chamber aforesaid diligently examined and more fully understood, it seemed to the said Court of the Exchequer Chamber aforesaid that the said Record Judgment affirmed is in no wise vitious or defective, and that the said Record was in no wise erroneous, therefore it was then and there considered by the same Court of the Exchequer Chamber aforesaid, that the Judgment aforesaid should in all Things be affirmed and stand in all its Force and Effect, the said Causes and Matters by the said *Adlard* and *Elizabeth* assigned and alledged for Error in any wise notwithstanding: And it was then and there further considered by the said Court that the said *Henry* do recover against the said *Adlard* and *Elizabeth* 10*l.* and 10*s.* adjudged by the Court there to the said *Henry* with his Assent, according to the Form of the Statute thereof made and provided, for his Damages, Costs and Charges which he hath sustained by occasion of the Delay of Execution of the Judgment aforesaid by Pretext of the Prosecution of the said Writ of Error;

Costs for Delay of Execution,

and the Record sent back to the King's Bench.

Satisfaction acknowledged.

Error; and thereupon the Record aforesaid, and also the Process aforesaid of the Justices of the Common Bench aforesaid, and the said Barons of the Exchequer aforesaid had before them in the Premises were then sent back by the same Justices and Barons, according to the Form of the Statute &c. before the Lord the King wheresoever &c. and do now remain in the Court of the Lord the King here before the King himself, &c. Afterward, to wit, on *Wednesday* next after three Weeks of the Holy *Trinity* in the 13th Year of the Reign of our Lord *William* the Third now King of *England*, &c. before the said Lord the King at *Westminster* cometh the aforesaid *Henry Harrison* by his said Attorney, and acknowledgeth himself to be satisfied by the aforesaid *Adlard* and *Elizabeth* of the Debt, Damages, Costs and Charges aforesaid, therefore they the said *Adlard* and *Elizabeth* are thereupon acquitted of the Debt, Damages, Costs and Charges aforesaid, &c.

Hilary Term in the 9th Year of King William the Third
Roll 1175.

Chaloner against Davis. 1 *Ld. Raym.* 400.

Debt for 100 l. Penalty upon Articles of Agreement.

That Plaintiff should make Defendant a good Conveyance of certain Lands.

Buckinghamshire, (to wit) **T**HOMAS *Davis* late of the Parish of *Stokelyne* in the County of *Oxford* Yeoman, otherwise called *Thomas Davis* of *Baynton* in the Parish of *Stokelyne* in the County of *Oxford* Yeoman, was summoned to answer *William Chaloner* Gent. of a Plea that he render to him 100 Pounds which he oweth to him and unjustly detains, &c. And whereupon the aforesaid *William* by *William Vaux* his Attorney saith, That whereas by a certain Writing of Articles of Agreement made the first Day of *May* in the 8th Year of the Reign of the Lord the now King, between the said *William Chaloner* by the Name of *William Chaloner* of *Steeple-Claydon* in the County of *Buckingham* Gent. of the one Part, and the aforesaid *Thomas* by the Name of *Thomas Davis* of *Baynton* in the Parish of *Stokelyne* in the County of *Oxford* Yeoman, of the other Part, at *Aylesbury* in the County of *Buckingham* aforesaid (the Counterpart whereof sealed with the Seal of the aforesaid *Thomas* he the said *William Chaloner* brings here into Court, the Date whereof is the same Day and Year) it was concluded and agreed in Manner and Form following, that is to say, First of all it was agreed by and between the Parties aforesaid, and the aforesaid *William Chaloner* for himself, his Heirs,

Executors,

Executors, Administrators, and Assigns, by the Writing of the Articles aforesaid covenanted and granted to and with the aforesaid *Thomas Davis*, his Heirs and Assigns, that the said *William Chalonier* and all Persons claiming under him on or before the 17th Day of *November* next following the Date of the Writing of the Articles aforesaid, should make, seal and deliver to the aforesaid *Thomas Davis*, at the Costs and Charges of the said *Thomas Davis*, a good and sufficient Title, Assurance and Conveyance in the Law of all that Messuage with the Outhouses, Edifices, Yards, Orchards, Gardens and Appurtenances thereunto belonging, and of one Close of Arable Land adjoining to the aforesaid Messuage, and of all those two Yard-lands of Arable, Meadow and Pasture Ground with the Appurtenances; all which said Premises are situate and being in the Town, Parish and Fields of *Steeple-Claydon* aforesaid, and then were in the possession of the said *William Chalonier*, and before that Time were in the Possession of *Thomas Snow* deceased. Also secondly it was further agreed, That the Defendant at the Time of the Execution of such Conveyance and in Consideration thereof should pay Plaintiff 503 l.

And the said *Thomas Davis* for himself, his Executors and Administrators covenanted and agreed to and with the said *William Chalonier*, his Executors, Administrators and Assigns by the Writing of the Articles aforesaid, that he the said *Thomas Davis* or his Assigns at the Time of the Execution and Sealing of such Conveyance, and in Consideration thereof would well and faithfully pay or cause to be paid to the aforesaid *William Chalonier*, his Executors, Administrators or Assigns, the just and full Sum of five hundred and three Pounds of lawful Money of *England*, at the House of *Sir Francis Child* situate at *Temple-Bar, London*. Thirdly it was agreed that the said *Thomas Davis* should enter upon and enjoy the aforesaid Close adjoining to the said House at the same Time when the said Sum of 503 l. should be paid to the aforesaid *William Chalonier* or his Assigns, and also all Commons for Cows and Horses belonging to the said two Yard-lands. Fourthly it was agreed that the aforesaid *William Chalonier* and his Assigns should enjoy all the Lands and Herbage and Furze in the Field called *Windmill-Fields* in the Parish of *Steeple-Claydon* aforesaid belonging to the aforesaid two Yard-lands, until the Crops which should be there growing in the Year of our Lord 1697 should be reaped, cut and carried off, and that he the said *William Chalonier* should have free Liberty to plough and sow the same. Fifthly it was agreed that the said *Thomas Davis* and his Assigns should enter upon the aforesaid Messuage, Outhouses, Edifices and Yards thereunto belonging,

At the House
of *Sir F. C.*

PLEADINGS TO THE CASES.

Both bind
themselves in
100 l. for the
true Perform-
ance, &c.

Averment
that the Plain-
tiff and one
R. M. (who
was possessed
of the Residue

longing, and a little Piece of Land about the Spring adjoining to the Backside of the said Messuage, and should inclose the same with Pale immediately after the Date of the Writing of the Articles aforesaid, he the said *William Chaloner* and his Assigns having Liberty to go through the Yard to fetch off his Crops of Corn then growing in the said Close. Sixthly it was agreed that the said *Thomas Davis* should enter upon all the Sheep-Commons upon the 29th Day of *September* next following, and also that he should enter upon and enjoy all the Lands belonging to the said two Yard-lands being in the Woodfield, as soon as the Crop then growing should be cut and carried off. Seventhly it was agreed that the said *William Chaloner*, or any other Person with his Privy, should not cut any Wood then growing upon any Part of the Premises at any Time after that Time. Lastly it was agreed that the said *Thomas Davis* or his Assigns yearly for ever afterwards should pay to the said *William Chaloner* or his Assigns the Sum of two Shillings on the 29th Day of *September*, and should appear at all the Courts afterwards to be holden for the Manor of *Steeple-Claydon* aforesaid; and for the true Performance of all and singular the Premises aforesaid, the aforesaid *William Chaloner* and *Thomas Davis* severally bound themselves to each other in the penal Sum of 100 l. of lawful Money of *England* by the same Writing, as by the Writing of the Articles aforesaid appeareth, he the said *William Chaloner* in Fact saith that he the said *William Chaloner* from the Time of the making of the Writing of the Articles aforesaid always hitherto hath been ready well and faithfully to observe, perform and keep all and singular the Covenants, Grants, Articles and Agreements in the said Writing of the Articles aforesaid above specified on his Part to be observed, performed and kept, according to the Form and Effect of the Writing of the Articles aforesaid; and that the aforesaid *Thomas* from the Time of the making of the Writing of the Articles aforesaid hitherto hath not observed, performed or kept any of the Covenants, Grants, Articles or Agreements whatsoever in the Writing of the Articles aforesaid above specified on his Part to be observed, performed and kept, according to the Form and Effect of the Writing of those Articles; and particularly he the said *William Chaloner* in Fact saith, that he the said *William Chaloner* and one *Robert Markbam* of *Tardley* in the County of *Hertford* Esq; after the making of the said Writing of the Articles aforesaid, and before the said 17th Day

Day

Day of *November* in the same Writing of the Articles mentioned, to wit, on the 16th Day of the same Month of *November* (the same *Robert Markham* being possessed of and in the Tenements and Premises aforesaid for the Residue of two Terms of Years, the Reversion thereof belonging to the said *William Chaloner* and his Heirs) at *Steeple-Claydon* aforesaid made and sealed their certain Indenture of Bargain and Sale of the Tenements and Premises aforesaid in the Writing of the Articles aforesaid mentioned, and then and there delivered that indenture as their Act and Deed to the Use of him the said *Thomas*, by which said Indenture the said *William Chaloner* and *Robert*, for and in Consideration of the several Sums of 5 s. of lawful Money of *England* to them the said *William Chaloner* and *Robert* in Hand respectively paid, bargained and sold to the said *Thomas* the Tenements and Premises aforesaid, by the Names of all that Messuage with the Outhouses, Edifices, Yards, Orchards, Gardens and Appurtenances thereunto belonging, and of one Close of Arable Land adjoining to the aforesaid Messuage, and of a little Piece of Land about the Spring adjoining to the Backside of the said Messuage, and also of all those two Yard-lands of Arable Land, Meadow and Pasture with the Appurtenances, situate and being in the Town, Parish and Fields of *Steeple-Claydon* aforesaid, and which then were in the Possession of the said *William Chaloner* and *Thomas Davis*, or of one of them, and which before that Time were in the Possession of *Thomas Snoru* deceased, and the Reversion and Reversions, Remainder and Remainders of all and singular the Premises, and of all the Rents, Services and other Profits of the Premises, and of every Part and Parcel thereof; To have and to hold the Premises aforesaid with the Appurtenances to the said *Thomas Davis* and his Assigns from the Day next before the Day of the Date of the said Indenture for and during the Term of one whole Year from thence next following and fully to be complete and ended; Yielding and paying therefore the Rent of one Pepper Corn at the Feast of Saint *Michael* the Archangel only, if the same should be demanded, to the Intent that by Virtue of the Indenture aforesaid, and the Statute for transferring of Uses into Possession, the said *Thomas Davis* might be in the actual Possession of the Premises, and able to accept of a Grant and Release of the Reversion and Inheritance thereof to himself the said *Thomas Davis* and his Heirs; and that they the said *William Chaloner* and *Robert* afterwards, to wit, upon the said 17th Day of *November* in the Writing of the Articles aforesaid

of two Terms of Years) sealed Indentures of Lease and Release of the Premises, and delivered to the Use of the Defendant.

(so

The Release.

(so as before is set forth) mentioned, at *Steeple-Claydon* aforesaid made and sealed a certain other Indenture of Release and Confirmation of the Tenements and Premises aforesaid, and then and there delivered that Indenture as their Act and Deed to the Use of him the said *Thomas* and his Heirs, by which said Indenture the said *William Chalon* for and in Consideration of the Sum of 503*l.* of lawful Money of *England* to him the said *William* in Hand mentioned to be paid, and the said *Robert* in Consideration of the Sum of 5*s.* of like lawful Money to him the said *Robert* in Hand likewise mentioned to be paid, released and confirmed to the said *Thomas Davis* (being in the actual Possession thereof) the Premises aforesaid, by the said Names of all that Messuage with the Outhouses, Edifices, Yards, Orchards, Gardens and Appurtenances thereunto belonging, and of one Close of Arable Land adjoining to the aforesaid Messuage, and of a little Piece of Land about the Spring adjoining to the Backside of the said Messuage, and also of all those two Yard-lands of Arable Land, Meadow and Pasture with the Appurtenances, situate and being in the Town, Parish and Fields of *Steeple-Claydon* aforesaid, and which then were in the Possession of the said *William Chaloner* and *Thomas Davis* or of one of them, and which before that Time were in the Possession of *Thomas Snow* deceased, and the Reversion and Reversions, Remainder and Remainders of all and singular the Premises, and of all the Rents and Services and other Profits of the Premises, and of every Part and Parcel thereof, and also all the Estate, Right, Title, Interest, Claim and Demand whatsoever which they the said *William Chaloner* and *Robert* had or hath, or in any Manner could or ought to have of, in or to the Premises, or any Part thereof; To have and to hold the Premises aforesaid with the Appurtenances to the said *Thomas*, his Heirs and Assigns, to the only Use of the said *Thomas Davis*, his Heirs and Assigns for ever; and that the said *Thomas* agreed for himself and his Assigns by the same Indenture yearly afterwards for ever to render and pay to the said *William Chaloner* or his Assigns the Sum of 2*s.* upon the 29th Day of *September*, and to appear at all the Courts afterwards to be holden for the Manor of *Steeple-Claydon* aforesaid; and the aforesaid *William Chaloner* then and there was ready and offered, and always afterwards hath been and yet is ready at the Costs of him the said *Thomas* to make and procure to be made any other Conveyance of the Tenements and Premises aforesaid according to the Form of the Articles aforesaid. And the

the said *William Chalon* in Fact further saith that the said *Thomas* afterwards, to wit, on the 17th Day of the said Month of *November* at *Steeple-Claydon* aforesaid had Notice of the Premises, and so having Notice thereof, the said *Thomas* then and there absolutely refused himself to agree to that Indenture, or to accept the same of them the said *William Chalon* and *Robert* as the Deed of them the said *William Chalon* and *Robert* to the aforesaid *Thomas* and yet doth refuse; and the said *Thomas* or his Assigns have not paid or caused to be paid to the said *William Chalon* the said Sum of 503*l.* according to the Form and Effect of the Writing of the Articles aforesaid, but to pay the same to the said *William Chalon* according to the Form and Effect of the Articles aforesaid, the said *Thomas* hath denied, and yet doth deny, by which an Action hath accrued to him the said *William Chalon* to require and have of the aforesaid *Thomas* the said 100*l.* Nevertheless the said *Thomas* although often requested hath not yet rendered to the said *William Chalon* the said 100*l.* but to render the same to him hath denied, and yet doth deny, whereupon he saith that he is injured, and hath sustained Damage to the Value of 20*l.* and thereupon he brings Suit, &c.

Demurrer, and Joinder in Demurrer.

Entred of Michaelmas Term in the 9th Year of King William the Third. B. R. Roll 178.

Doctor Groenvelt against Doctor Burwell and others, Censors of the College of Physicians. 1 *Ld. Raym.* 454.

London, (to wit) **B**E it remembered that heretofore to Trespass, Assault, and Imprisonment before the Lord the King at *Westminster* came *John Groenvelt* Doctor in Physick by *Thomas Prime* his Attorney, and against the Censors, &c. of the College of Physicians, brought here in the Court of the said Lord the King then there his certain Bill against *Thomas Burwell*, *Richard Torlefs*, *William Dawes* and *Thomas Gill* Doctors in Physick, and *John Cole*, in the Custody of the Marshal, &c. of a Plea of Trespass, Assault and Imprisonment; and there are Pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said Bill follows in these Words, (to wit) *John Groenvelt* Doctor in Physick complains of *Thomas Burwell*, *Richard Torlefs*, *William Dawes*, and *Thomas Gill* Doctors in Physick, and *John Cole*, being in the Custody of the Marshal of the *Marshalsea* of the Lord the King before the King himself, for that they the said *Thomas Burwell*

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PLEADINGS TO THE CASES.

Burwell, Richard Torlefs, William Dawes, Thomas Gill and John Cole, on the 15th Day of *April* in the 9th Year of the Reign of the Lord *William* the Third now King of *England, &c.* with Force and Arms, that is to say with Swords, Staves and Knives made an Assault upon him the said *John Groenvelt* at *London* aforesaid, to wit, in the Parish of the Blessed *Mary of the Arches* in the Ward of *Cbeape*, and him the said *John Groenvelt* then and there did beat, wound and ill treat, so that of his Life it was greatly despaired, and did then and there imprison him the said *John Groenvelt*, and him so in Prison there detained for a long Space of Time, to wit, for the Space of seven Days from thence next following without any reasonable Cause, against the Will of him the said *John Groenvelt*, and contrary to the Law and Custom of this Kingdom of *England*, and other Wrongs to him then and there did against the Peace of the said Lord the now King, and to the Damage of him the said *John Groenvelt* of 2000 *l.* and thereupon he brings Suit, &c.

Imparllance.

And now here at this Day, to wit, *Saturday* next after three Weeks of Saint *Michael* in this same Term, until which Day the aforesaid *Thomas Burwell, Richard Torlefs, William Dawes, Thomas Gill* and *John Cole* had leave to imparll to the Bill aforesaid and then to answer &c. before the Lord the King at *Westminster* come as well the aforesaid *John Groenvelt* by his Attorney aforesaid, as the aforesaid *Thomas, Richard, William, Thomas, and John Cole*, by *Richard Swift* their Attorney, and they the said *Thomas, Richard, William, Thomas, and John Cole* defend the Force and Injury when, &c. and as to the coming with Force and Arms, or whatsoever that is against the Peace of the said Lord the now King, and also the beating and wounding aforesaid above supposed to be done, say that they are not guilty thereof, and of this they put themselves upon the Country, and the aforesaid *John Groenvelt* thereof likewise, &c. And as to the Residue of the Trespass and Imprisonment aforesaid above supposed to be done, they the said *Thomas, Richard, William, Thomas, and John Cole* say, that the aforesaid *John Groenvelt* ought not to have or maintain his said Action thereof against them, because they say that long ago, and long before the aforesaid Time when the Trespass and Imprisonment aforesaid is supposed to be done, the Lord *Henry* the Eighth late King of *England*, by his Letters Patent sealed under his Great Seal of *England* bearing Date at *Westminster* the 23d Day of *September* in the tenth Year of his Reign, which they the said *Thomas, Richard, William, Thomas, and John Cole*

Plea Not Guilty as to the Force and Arms, Beating and Wounding and Issue thereupon joined.

As to the Residue they plead in Bar.

Setting out the Letters Patent of *Henry* the 8th to the College of Physicians.

bring

ring here into Court, reciting that whereas it was thought the Blessing of his Royal Office, with all due Consideration to consult the Happiness of the People of his Realm, and first of all, if it could be, how he might in due Season put a stop to the Enterprizes of wicked Persons, he chiefly held it necessary to check the Boldness of wicked Men who professed Physick more for the Sake of Avarice than in Confidence of any good Conscience, from whence very many Inconveniencies did arise to the rude and credulous common People; therefore partly imitating the Example of the well-governed Cities in *Italy* and in many other Nations, partly yielding to the Prayers of the grave Men and Doctors *John Chambre*, *Thomas Linacre*, *Ferdinand de Victoria* his Physicians, and of *Nicholas Halsewell*, *John Francisco* and *Robert Yaxley* Physicians, and especially of the most Reverend Father in Christ and Lord *Thomas*, styled of the Holy Church beyond *Tiber* Cardinal Priest of the most Holy *Roman* Church, Archbishop of *York*, and the most noble Chancellor of his Realm of *England*, he willed and commanded to be instituted a perpetual College of Doctors and grave Men who should publickly practise Physick in his City of *London* and Suburbs and within seven Miles every way from that City, to whom, as he hoped it would be for his own Honour, as well as for the Care of the publick Utility, to deter malicious Persons (whose Ignorance and Rashness he remembered), as well by their Example and Gravity, as to punish them by his Laws lately set forth, and by Constitutions to be ordained by the same College, which Things that they might be more easily rightly accomplished, he granted to the aforesaid Doctors *John Chambre*, *Thomas Linacre*, *Ferdinand de Victoria* his Physicians, *Nicholas Halsewell*, *John Francis*, and *Robert Yaxley* Physicians, That they and all the Men of the same Faculty of and in the City aforesaid should be in Thing and Name one Body and perpetual Commonalty or perpetual College, and that the same Commonalty or College might every Year for ever chuse and make of that Commonalty some provident Man and skilful in the Faculty of Physick for the President of the same College or Commonalty, to supervise, review and govern for that Year the College or Commonalty aforesaid and all Men of the same Faculty, and the Busineses of the same; and that they the said President and College or Commonalty should have a perpetual Succession, and a common Seal for the Busineses of the said Commonalty and President to be kept for ever, and that they and their Successors for ever should be Persons able and capable to purchase and possess

PLEADINGS to the CASES.

in Fee and perpetuity Lands and Tenements, Rents and other Possessions whatsoever: He also granted for himself and his Heirs to them and their Successors, that they and their Successors might purchase to themselves and their Successors as well in the said City as without it, any Lands and Tenements whatsoever not exceeding the yearly Value of twelve Pounds, the Statute of Alienations in Mortmain notwithstanding; and that they by the Name of The President of the College or Commonalty of the Faculty of Physick might plead and be impleaded before whatsoever Judges in all Courts and Actions, whatsoever, and that the aforesaid President and College or Commonalty and their Successors, lawful and honest Assemblies of themselves, and Statutes and Ordinances for the wholesome Government, Overlooking and Correction of the College or Commonalty aforesaid, and of all Men practising the same Faculty in the said City or within seven Miles in Circuit of the same City according to the Exigence of Necessity, as often as and when need should be, might lawfully and without Peril make without the Hinderance of the said late King, his Heirs or Successors, his Justices, Escheators, Sheriffs and others his Bailiffs or Ministers, or of his Heirs and Successors whatsoever. He also granted to them the said President and College or Commonalty and their Successors, that nobody in the said City or seven Miles in the Circuit thereof should exercise the said Faculty unless he should be admitted to this by the said President and Commonalty or their Successors for the Time being, by the Letters of the same President and College sealed with their common Seal, under the Penalty of 100 Shillings for every Month wherein (not being admitted) he should exercise the same Faculty, half thereof to be applied to the said Lord the King, and half to the said President and College. Besides he willed and granted for himself and his Successors (as much as in himself was) that by the President and College of the aforesaid Commonalty for the Time being and their Successors for ever, four Persons should be chosen by them every Year, who should have the Overseeing and Searching, Correction and Government of all and singular the Physicians of the said City practising the Faculty of Physick in the same City, and of other foreign Physicians whomsoever practising and using in any Manner the said Faculty of Physick within the same City, Suburbs thereof or within seven Miles in Circuit of the same City, and the Punishment of them for their Offences in not well exercising, doing and using the same; and also the Overseeing

and Searching of all Medicines, and the Reception (or Recipes) of them by the said Physicians or any of them to the Liege People of the said late King for Curing, and their Infirmities to be given, put and used, as often and when need should be for the Profit and Utility of the said Liege People of the said late King; so that the Punishment of such Physicians using the said Faculty of Physick so offending in the Premises should be executed by Fines, Amercements, Imprisonment of their Bodies, and by other Ways reasonable and fitting. He also willed and granted for himself, his Heirs and Successors, (as much as in him was) that neither the President nor any other of the said College of Physicians, nor their Successors, nor any of them exercising that Faculty in any Manner for the future within the City aforesaid and the Suburbs thereof, or elsewhere should be summoned or put, nor should any of them be summoned or put in any Assises, Juries, Inquests, Inquisitions, Attaints, and other Recognitions within the said City or Suburbs thereof in Time to come, to be taken before the Mayor and Sheriffs, or Coroners of his said City for the Time being, or to be summoned by any their Officer or Minister, or their Officers or Ministers, although the same Juries, inquisitions or Recognitions should be summoned upon the Writ or Writs of Right of the said late King or his Heirs, but that the said Masters or Governors and Commonalty of the Faculty aforesaid and their Successors, and every of them exercising the said Faculty, should be thereof acquitted and absolutely discharged for ever against the said late King, his Heirs and Successors, and against the Mayor and Sheriffs of his City aforesaid for the Time being, and all their Officers and Ministers whatsoever, as by the same Letters Patent among other Things more fully appears. And they the said *Thomas, Richard, William, Thomas*, and That they *John Cole* further say, that by Virtue of the Letters Patent were incorporated aforesaid, the aforesaid *John Chambre, Thomas Linacre, Ferdinand de Victoria, Nicholas Halswell, John Francis and Richard Taxley* Physicians, and all Men of the same Faculty in the City aforesaid were one Body and perpetual Commonalty or perpetual College; and afterwards by a certain Act set forth in the Parliament of the said late King *Henry the Eighth*, Letters Patent holden at *Westminster* in the County of *Middlesex* the last tent. Day of *July* in the 15th Year of the same late King by Prorogation, (amongst other Things) it was enacted by the Authority of the same Parliament, That forasmuch that the making of the said Corporation was meritorious and very good for the Commonwealth of this Realm of *England*; and

The Statute of Hen. 8.

confirming the Letters Patent

PLEADINGS TO THE CASES.

The Statute
of *Mary* con-
firming the
same,

besides it was expedient and necessary to provide that no Person of the said Politic Body and Commonalty aforesaid should be suffered to exercise and practise Physick but only such Persons as should be profound, sad and discreet, groundedly learned, and deeply studied in Physick : In Consideration whereof, and for the farther authorizing of the said Letters Patent, and also for enlarging of farther Articles for the said Commonwealth, to be had and made by the said late King, with the Consent of the Lords Spiritual and Temporal and Commons in the same Parliament assembled, it is enacted amongst other Things, That the said Corporation of the said Commonalty and Fellowship of the Faculty of Physick aforesaid, and all and every Grant, Article and other Things contained and specified in the said Letters Patents, should be approved, granted, ratified and confirmed in the same Parliament, and clearly authorized and admitted by the same Parliament good, lawful and available to the aforesaid Body Corporate and their Successors for ever, in as ample and large Manner as may be taken, thought and construed by the same Letters Patents. And it is further enacted, ordained and established by the said Act, that the aforesaid six Persons in the aforesaid Letters Patents named as Principals, and first named of the said Commonalty and Fellowship, should choose to themselves two others of the same Commonalty, who from thenceforth should be called and named Elects, and that the same Elects should yearly choose one of them to be President of the said Commonalty, and as often as any of the Rooms and Places of the said Elects should fortune to be void by Death or otherwise, then the Survivors of the said Elects within 30 or 40 Days next after the Death of them, or any of them, should choose, name and admit one or more as need should require, of the most learned and experienced Men of and in the said Faculty in *London* to supply the said Room and Number of 8 Persons, so that he or they that should be so chosen be first by the said Survivors strictly examined after a Form devised by the said Elects, and also by the same Survivors approved, as by the same Act amongst other Things more fully appears. And they the aforesaid *Thomas, Richard, William, Thomas* and *John* further say, that afterwards and long before the aforesaid Time when, &c. by a certain other Act set forth in the Parliament of *Lady Mary* late Queen of *England*, holden at *Westminster* on the 24th Day of *October* in the first Year of her Reign, it was enacted by the Authority of the same Parliament, that the said Statute or Act of Parlia-

ment before recited in every Article and Clause therein contained should from thenceforth stand and continue still in full Force, Strength and Effect, any Statute, Law, Custom or any other Thing made, had or used to the contrary, in any wise notwithstanding: And for the better Reformation of divers Enormities happening to the Commonwealth by the evil using and undue Administration of Physick, and for the enlarging of further Articles for the better Execution of the Things contained in the aforesaid Grant, it was further enacted by the same Act made in the aforesaid Parliament of the said late Queen, That whensoever the President of the College or Commonalty of the Faculty of Physick of *London* for the Time being, or such as the said President and College should yearly, according to the Tenor and Meaning of the said Act, authorize to search, examine, correct and punish all Offenders and Transgressors in the said Faculty within the same City and Precinct in the said Act expressed, should send or commit such Offender or Offenders for his or their Offences or Disobedience, contrary to any Article or Clause contained in the said Grant or Act, to any Ward, Gaol or Prison within the same City or Precinct aforesaid, (the *Tower of London* except) That then from Time to Time the Warden, Gaoler or Keeper, Wardens, Gaolers or Keepers of the Wards, Gaols and Prisons within the City or Precinct aforesaid (except before excepted) should receive into his, or their Prisons, all and every such Person and Persons so offending as should be sent or committed to him or them as is aforesaid, and there should safely keep the Person or Persons so committed into any of their Prisons, at the proper Costs and Charges of the said Person or Persons so committed, without Bail or Mainprize, until such Time as such Offender or Offenders, or Disobedients, should be discharged of the said Imprisonment by the said President, and such Persons as by the said College should be authorized, upon Pain that every such Warden, Gaoler and Keeper doing the contrary, should lose and forfeit the double of such Fines and Amercements as such Offender and Offenders, or Disobedients, should be assessed to pay, by such as the said President and College should authorize as aforesaid, so that the same Fine and Amercement should not be at any Time above the Sum of 20 *l.* the Moiety thereof to be employed to the Use of the said late Queen, her Heirs and Successors, the other Moiety unto the said President and College; all which Forfeitures should be recovered by Action of Debt, Bill, Plaint or Information in any of the said late Queen's, her Heirs and Successors

and enlarging
their Power.

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Courts of Record against any such Warden, Gaoler or Keeper so offending, in which Suit no Essoign, Wager of Law, nor Protection should be allowed, nor be admitted for the Defendant. And it was further enacted by the authority of the said Parliament, that all Justices, Mayors, Sheriffs, Bailiffs, Constables, and other Ministers and Officers within the City and Precinct aforesaid, upon Request of them to be made, should help, aid and assist the President of the said College and all Persons by them from Time to Time authorized for the due Execution of the said Acts, upon Pain for not giving Help to run in Contempt of the said late Queen, her Heirs and Successors, as by the same Act amongst other Things more fully appears. And they the said *Thomas, Richard, William, Thomas*, and *John Cole* further say, that the aforesaid *John Groenvelt* for a long Space of Time, to wit, for five Years last past and more, within the City of *London* and the Circuit of seven Miles of the same, to wit, at *London* aforesaid in the Parish and Ward aforesaid hath exercised and used, and as yet doth exercise and use the Faculty of Physick, and the same *John* so exercising and using that Faculty, and pretending himself to be very skilful in the same, before the aforesaid Time when, &c. to wit, on the first Day of *April* in the 8th Year of the Reign of our Lord *William* the Third now King of *England*, &c. there undertook and assumed upon himself to cure and heal one *Susan Witball*, then the Wife of one *William Witball*, of a certain Infirmary or Disease a little Time after the Time of her Travail, (and Delivery) and happening by occasion thereof as it was supposed, whereof she laboured and was detained, for forty Shillings to him the said *John Groenvelt* in Hand paid, and other forty Shillings to him afterwards to be paid: Nevertheless the said *John Groenvelt*, his Cure, then and there about the said *Susannah*, so indiscreetly, evilly, inartificially and unskilfully applied, and such unwholesome, wicked, bad and pernicious Pills and noxious Drugs to her then and there gave and administered, that the said *Susannah* not only was not healed, but became very much more and greatly infirm, and was greatly and dangerously hurt in her Body, and from thenceforth hitherto hath laboured thereof with extreme Grief, and languished in the most sad and miserable Condition, and as yet so labours thereof, and is languid and incurable, so that her Life was despaired of, and as yet is despaired of, by occasion of the bad, unskilfulness and pernicious Practice of him the said *John Groenvelt* in this Behalf committed and

and perpetrated upon the Body of her the said *Susannah*. And they the said *Thomas, Richard, William, Thomas*, and *John Cole* further say, that by Virtue of the Letters Patent aforesaid, and by Force of the Statutes aforesaid, one *Thomas Millington* Knt. Doctor in Physick, a prudent Man and skilful in the Faculty of Physick, and then one of the Commonalty of the College of Physicians in *London* aforesaid, and then being one of the eight Elects of the College or Commonalty aforesaid, before the aforesaid Time when, &c. to wit, on the 30th Day of *September* in the 8th Year of the Reign of the Lord the now King at the College of Physicians, situate in the Parish of *Christchurch* in the Ward of *Farringdon Within London*, was in due Manner choser and preferred to the Office of President of the College or Commonalty aforesaid, and being in the Office of President of the College or Commonalty aforesaid, they the same President and College of the aforesaid Commonalty on the same 30th Day of *September* in the 8th Year aforesaid at the College aforesaid in the Parish of *Christchurch* aforesaid did choose them the said *Thomas Burwell, Richard, William* and *Thomas Gill*, prudent Men and skilful in the Faculty of Physick, and then being Doctors of the College aforesaid, to be the four Censors or Governors of the Commonalty aforesaid to oversee and search, correct and govern all and singular the Physicians of the said City using the Faculty of Physick in the same City, and other foreign Physicians whomsoever frequenting to, and using the Faculty of Physick in any Manner within the same City and the Suburbs thereof, or within seven Miles in Circuit of the same City, and to punish them for their Faults, in not well exercising, doing and using the same, and also to oversee and search their Medicines, and their Recipe's by the said Physicians or any of them given, applied or used for curing the Infirmities of the Liege People, and such like of the said Lord the King as often and when need should be, and for the Profit and Utility of the same Liege People, and to punish those Physicians Delinquents using the said Faculty of Physick in the Premises by Fines, Amercements and the Imprisonment of their Bodies, and by other Ways reasonable and fitting, according to the Form and Effect of the Letters Patents aforesaid, and of the Statutes aforesaid: Which said *Thomas, Richard, William* and *Thomas* then and there took upon themselves that Office and became Censors and Governors of the College or Commonalty aforesaid in due Manner, and so, until the aforesaid Time when, &c. and afterwards continued

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nued and existed; and they the said *Thomas, Richard, William, Thomas*, and *John Cole* further say, that afterwards and before the said Time when, &c. to wit, on the fifth Day of *February* in the 8th Year of the Reign of the Lord the now King at the College of Physicians in the Parish of *Christchurch* in the Ward of *Farringdon* Within aforesaid, a certain Complaint on the Behalf of the aforesaid *William Witball* and *Susannab* his Wife was made and exhibited to them the said *Thomas, Richard, William* and *Thomas* then being Censors or Governors of the College aforesaid as before is set forth, against the aforesaid *John Groenvelt* for the aforesaid undue, unskillful, bad and pernicious Practice upon the Body of the aforesaid *Susannab* by him the said *John Groenvelt* so as before is set forth, done and committed; and thereupon the aforesaid *John Groenvelt* afterwards, to wit, on the same 5th Day of *February* in the 8th Year aforesaid at *London* aforesaid in the Parish of the Blessed *Mary of the Arches* in the Ward of *Cheape* aforesaid was in due Manner summoned by them the said *Thomas, Richard, William* and *Thomas*, then Censors or Governors of the College aforesaid, to appear before them the said Censors or Governors of the College aforesaid at the College aforesaid on the 9th Day of *April* then next following, to be examined and to answer of and concerning the Premises; and that before the aforesaid Time when, &c. to wit, on the same 9th Day of *April* in the 9th Year of the Reign of the said Lord the now King, before the aforesaid *Thomas, Richard, William* and *Thomas*, then being Censors or Governors of the College aforesaid as before is set forth, at the College aforesaid came the aforesaid *John Groenvelt* in his proper Person, and the aforesaid Censors or Governors thereupon then and there did proceed to examine and inquire into the Matter of Complaint aforesaid, and upon the Attestation of diverse credible Persons then present affirming the Truth of the Complaint aforesaid, in the Presence of him the said *John Groenvelt*, and upon hearing him the said *John Groenvelt* whatsoever he could say in Defence or Excuse of himself and upon Consideration of the whole Matter aforesaid they the said *Thomas, Richard, William* and *Thomas*, being Censors or Governors of the College aforesaid so as before is set forth, did then and there by Virtue of the Letters Patent and of the Statutes aforesaid adjudge the aforesaid *John Groenvelt* to be guilty of the undue, unskillful and bad Practice aforesaid, and therefore they did then and there impose a Fine of 20*l.* of lawful Money of *England* upon him

him the said *John Groenvelt*; and they did further adjudge that he the said *John Groenvelt*, for his Offence aforesaid, should be committed to the Gaol of the said Lord the King of *Newgate* in *London*, and should have and undergo Imprisonment in the same Gaol at his own proper Costs and Charges without Bail or Mainprize for the Space of twelve Weeks then next following, unless he should be sooner discharged by the President of the College aforesaid, and such Persons as by the College aforesaid should be thereunto lawfully authorized, or otherwise by due Course of Law; which said Adjudication of those Censors or Governors was put, and recorded in Writing, and now remains in the Power of them the said Censors or Governors not annulled, but is in full Force; and the aforesaid *Thomas, Richard, William, Thomas*, and *John Cole* further say, that they the said *Thomas, Richard, William* and *Thomas*, with Intention that Execution of the Judgment or Adjudication aforesaid should be done, by Virtue of the Letters Patents and of the Statutes aforesaid then and there by their certain Precept or Warrant in Writing reciting the Complaint and Judgment or Adjudication aforesaid at large, under their Hands and Seals did command him the said *John Cole* (being their Minister to execute such their Precepts) that he should take the Body of him the said *John Groenvelt*, and deliver him to the Keeper of the Gaol of *Newgate* aforesaid, there to remain without Bail or Mainprize for the Space of the aforesaid twelve Weeks, unless he should be sooner delivered by the President of the College aforesaid, and such Persons as by the College aforesaid, should be authorized, or otherwise by due Course of Law; by Virtue of which Warrant the aforesaid *John Cole* at the said Time when, &c. at *London* aforesaid in the Parish of the Blessed *Mary of the Arches* in the Ward of *Cheape* aforesaid took the aforesaid *John Groenvelt* and then delivered him together with the Warrant aforesaid under the Hands and Seals of the same four Censors, specifying the Premises to the Keeper of the Gaol aforesaid, there to be detained in Form aforesaid, as it was well lawful for him to do; and the same *John Groenvelt* thereupon was detained in Prison there for the Time aforesaid in the Declaration aforesaid mentioned; which said Taking, Imprisonment and Detention in the Prison aforesaid of the aforesaid *John Groenvelt* in Form aforesaid and for the Cause aforesaid done, are the same Residue of the *Trespass* and Imprisonment aforesaid whereof the aforesaid *John Groenvelt* himself now complains; and this they are ready to

verify:

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verify: Whereupon they pray Judgment if the aforesaid *John Groenvelt* ought to have or maintain his Action aforesaid thereof against them, &c.

B. Shower,
Law. Agar,
Jo. Keene.

Replication.

And the aforesaid *John Groenvelt* saith that he by any Thing by the aforesaid *Thomas Burwell, Richard Torless, William Dawes, Thomas Gill* and *John Cole* above in pleading alledged ought not to be barred from having his Action aforesaid as to the Residue of the Trespass, Imprisonment and Detention in Prison aforesaid against them, because he saith that well and true it is that he the said *John Groenvelt* for a long Space of Time, to wit, for five Years next before the exhibiting the Bill of him the said *John Groenvelt* aforesaid, was, and as yet is a Doctor of Physick, and did exercise and use the Art or Faculty of Physick for the whole Time aforesaid within the City of London aforesaid and the Circuit of seven Miles of the same, as they the aforesaid *Thomas Burwell, Richard Torless, William Dawes, Thomas Gill* and *John Cole* have above in pleading alledged, but the same *John Groenvelt* protesting that the Lord *Henry* late King of England did not grant by any such Letters Patents as they the said *Thomas Burwell, Richard Torless, William Dawes, Thomas Gill* and *John Cole* have above in pleading alledged; and protesting also that there is not had any such Record of the Act of Parliament of the said late King *Henry* the Eighth as they the said *Thomas Burwell, Richard Torless, William Dawes, Thomas Gill* and *John Cole* have above in pleading likewise alledged; and protesting also that he the said *John Groenvelt* his Cure about the said *Susannab Witball* in the said Plea of them the said *Thomas Burwell, Richard Torless, William Dawes, Thomas Gill* and *John Cole* named, did not indiscreetly, evilly, inartificially and unskilfully apply, nor any unwholsome, wicked, bad and pernicious Pills or noxious Drugs to her gave, or administred, as they the said *Thomas Burwell, Richard Torless, William Dawes, Thomas Gill* and *John Cole* by their Plea aforesaid have above alledged; and protesting also that no Complaint on the Behalf of the aforesaid *William Witball* and *Susannab* his Wife was made or exhibited to them the said *Thomas, Richard, William* and *Thomas Gill* against him the said *John Groenvelt* for the undue, unskilful, bad and pernicious Practice upon the Body of the aforesaid *Susannab* by him the

the said *John Groenvelt* supposed to be done and committed, as they the said *Thomas, Richard, William, Thomas, and John Cole* above in pleading have alledged; and that no such Judgment or Adjudication of the aforesaid *Thomas, Richard, William and Thomas* was given, as they the said *Thomas, Richard, William, Thomas, and John Cole* by their Plea aforesaid have above assledged; for Plea the said *John Groenvelt* by replying saith, That they the said *Thomas Burwell, Richard Torless, William Darwes, Thomas Gill and John Cole* of their own Wrong made an Assault upon him the said *John Groenvelt*, and did ill treat, imprison him, and for the Space of seven Days did detain him in Prison in Manner and Form as the aforesaid *John Groenvelt* above hath declared against them, and not by Virtue of the Warrant to him the said *John Cole* by the Plea aforesaid above supposed to be made; and this he prays may be inquired of by the Country.

*Nath. Wright,
Jo. Girdler,
Ed. Northby.*

And the aforesaid *Thomas, Richard, William, Thomas, Demurret. and John Cole* say, that the aforesaid Plea of the said *John Groenvelt* in Manner and Form aforesaid above pleaded in reply, and the Matter therein contained, are not sufficient in Law for him the said *John Groenvelt* to have his said Action thereof to be maintained against the said *Thomas, Richard, William, Thomas, and John Cole*, to which said Plea or Replication of the said *John Groenvelt* in Manner and Form aforesaid pleaded, they the said *Thomas, Richard, William, Thomas, and John Cole* have no Necessity, neither are they bound by the Law of the Land in any Manner to answer; whereupon for want of a sufficient Replication of the aforesaid *John Groenvelt* in this Behalf, they the said *Thomas, Richard, William, Thomas, and John Cole* as before pray Judgment, and that the aforesaid *John Groenvelt* may be barred from having his Action aforesaid thereof against them the said *Thomas, Richard, William, Thomas, and John Cole, &c.* And for Causes of this Demurrer in Law upon the Replication aforesaid they the said *Thomas, Richard, William, Thomas, and John Cole* shew to the Court here and say, that where the aforesaid *John Groenvelt* in his said Replication says (amongst other Things) that well and true it is that he for a long Space of Time, to wit, for the aforesaid five Years was and as yet is a Doctor of Physick, &c. as they the aforesaid *Thomas, Richard,*

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Richard, William, Thomas, and John Cole have above in pleading alledged, there sufficiently and manifestly appears to the Court here *that* which is not alledged in the aforesaid Plea of them the said *Thomas, Richard, William, Thomas, and John Cole*, but they have only alledged thereupon that the aforesaid *John Groenvelt* hath exercised and used for that Time, and as yet doth exercise and use the Art or Faculty of Physick, pretending himself to be very skilful in the same, which Allegation differs much from that which the aforesaid *John Groenvelt* by his same Replication doth suppose them to have made; and that the Protestations of the aforesaid *John Groenvelt* are vain, void, and altogether superfluous, and the first of them is an imperfect Sentence and deficient in Sense, and the second of the same Protestations is negative pregnant, ambiguous and uncertain; and also especially that the aforesaid *John Groenvelt* traverseth the Virtue of the Warrant aforesaid, which is not traversable, it being Validity and Matter of Law, where he ought to traverse the Making or the Existence of the same Warrant, or the Delivery thereof to the said *John Cole, &c.* Further the aforesaid *John Groenvelt* traverseth or denies that they the said *Thomas, Richard, William, Thomas, and John Cole*, that is to say all of them, by Virtue of the Warrant aforesaid did imprison him the said *John Groenvelt*, and tenders this for an Issue, where they have above alledged that the said *John Cole* only by Virtue of that Warrant took the aforesaid *John Groenvelt* and delivered him into Prison, and that they the said *Thomas, Richard, William and Thomas* made that Warrant to him: And also the said Traverse wants Form for want of these Wordss, to wit, (*Without this*) or (*without such Cause*) which in such Traverses are used and ought to be put.

Joinder in
Demurrer.

And the aforesaid *John Groenvelt* saith that the Plea aforesaid by him the said *John Groenvelt* in Manner and Form aforesaid above pleaded in reply, and the Matter therein contained, are good and sufficient in Law to have the aforesaid Action of him the said *John Groenvelt* to be maintained against the said *Thomas, Richard, William, Thomas, and John Cole*; which said Plea and the Matter therein contained, he the said *John Groenvelt* is ready to verify and prove as the Court, &c. And because the aforesaid *Thomas, Richard, William, Thomas, and John Cole* do not answer to that Replication, nor do hitherto in any wise deny it, he the said *John Groenvelt* prays Judgment and his Damages by occasion of the Tresspass, Assault and Imprisonment

prisonment aforesaid to be adjudged to him. But because the Court of the Lord the King now here is not yet advised of giving their Judgment of and concerning the Premises, Day is given to the Parties aforesaid, &c.

Entred of Hilary Term in the 9th Year of King William the Third. Roll 437.

Iveson against Moore and others. 1 Ld. Raym. 486.

Torksbire, (to wit) **B**E it remembered that heretofore, to wit, in the Term of Saint Michael last past before the Lord the King at *Westminster* came *Henry Iveson* by *William Calvert* his Attorney, and brought here in Court of the said Lord the King then there his certain Bill against *John Moore, Esq;* and *Ruth* his Wife, *Samuel Wright, Jeremiab Colley, Henry Smith* and *Peter Clakey*, in the Custody of the Marshal, &c. of a Plea of Treasons upon the Case; and there are Pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said Bill followeth in these Words, to wit, *Torksbire, to wit, Henry Iveson* complains of *John Moore, Esq;* and *Ruth* his Wife, *Samuel Wright, Jeremiab Colley, Henry Smith* and *Peter Clakey*, being in the Custody of the Marshal of the *Marshalsea* of the Lord the King before the King himself, for that, to wit, that whereas the said *Henry Iveson* on the 14th Day of *May* in the ninth Year of the Reign of our Lord *William the Third* now King of *England, &c.* and long before and always afterwards until this Time was possessed and as yet is possessed for a certain Term of Years, then and yet to come and unexpired, of and in a certain Colliery and Mine of Coals, being under the Soil and Land, and in the Bowels of a certain Close or Parcel of Land situate and lying in the Parish of *Whitkirke* otherwise *Whitchurch* in the County aforesaid, called *Whitkirke* otherwise *Whitchurch-fields*, and near adjacent to the King's common Highway in the Parish aforesaid, leading on the North Part of the Town of *Wetherby* in the County aforesaid in, by and over a certain Moor there called *Winmore*, and from thence in, by and through a certain Lane there called *Aulshaw-Lane*, and from thence in, by and through the Village of *Whitkirke* otherwise *Whitchurch* aforesaid, and so back again, and also of and in a certain other Colliery and Mine of Coals being under the Soil and Land and in the Bowels of a certain Close of Moor or Parcel of Land

Case for stopping a Highway whereby the Customers could not come to Plaintiff's Collieries, and his Coals were spoiled.

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Land in the Parish aforesaid called *Halton Moor*, situate and lying and near adjacent to the King's common Highway leading on the North Part from the Village of *Whitkirke* aforesaid, in, by and over the said Moor called *Winmore*, and from thence in, by and through the Lane aforesaid called *Aulshaw-Lane*, and from thence in, by and through the Village of *Halton* aforesaid in the County aforesaid, and so back again, in, by and through which said Lane called *Aulshaw-Lane* the Coals gotten and dug out of the said Mines were used, and intended to be carried and conveyed from the Closes aforesaid to the neighbouring and circumjacent Places. And also whereas on the same 14th Day of *May* the aforesaid *Henry Iveson* had a great Quantity, to wit, two hundred Cart-loads of Coals dug out of the Mines aforesaid in the several Closes aforesaid ready to be exposed to Sale, the aforesaid *John, Ruth, Samuel, Jeremiab, Henry Smith* and *Peter* not being ignorant of the Premises, but contriving and fraudulently and maliciously intending to hinder, deceive and deprive him the said *Henry* of the Use and Benefit of his said Collieries, and the Buyers of the Coals dug out of the said Collieries to draw away and seduce from the said Collieries, and to appropriate and procure them to the Colliery of the said *John Moore*, near adjacent in the Parish aforesaid afterwards, to wit, on the said 14th Day of *May* in the ninth Year of the Reign of the said Lord the now King aforesaid did put and place four Cart-loads of great Stones and one Root of a great Ash in the said Way at the Parish aforesaid, and continued and permitted the Stones and Root of the Ash aforesaid there to remain for the Space of one Month, by which said Stones and Root of the Ash aforesaid the Way aforesaid in, by and through the Lane aforesaid was so much stopped up and obstructed that the Carts and Carriages for the carrying and conveying of the Coals gotten and dug out of the Collieries and Mines aforesaid could not pass in, by and through the said Way by the Lane aforesaid, by which he the said *Henry Iveson* wholly lost the Benefit, Profit and Advantage of his Collieries aforesaid for the whole Time aforesaid, and the Coals gotten out of the Collieries aforesaid for want of Buyers so hindered and obstructed by the Cause aforesaid became greatly damaged and of less Price, to the Damage of the said *Henry* of fifty Pounds.

Plea, Not Guilty.

Plea

Plas before our Lord the King and our Lady the Queen at Westminster of the Term of Easter in the second Year of the Reign of our Lord William and our Lady Mary King and Queen of England, &c. Roll 43.

Payne against Partridge. 1 Ld. Raym. 493, 494.

Cambridgeshire, (to wit)

BE it remembered that heretofore, to wit, in the Term of Saint Michael last past before our Lord the King and our Lady the Queen at Westminster came Isaac Payne by Humphry Ambler his Attorney, and brought into the Court of our said Lord the King and Lady the Queen then there his certain Bill against Edward Partridge Esq; and William Boulter in the Custody of the Marshal, &c. of a Plea of Trespass upon the Case; and there are Pledges of prosecuting, to wit, John Doe and Richard Roe, which said Bill follows in these Words, to wit, Cambridgeshire, to wit, Isaac Payne complains of Edward Partridge Esq; and William Boulter, being in the Custody of the Marshal of the Marshalsea of our Lord the King and Lady the Queen, for that, (to wit) That whereas the Town of Littleport within the Isle of Ely in the County aforesaid is, and from all Time whereof the Memory of Man is not to the contrary hath been an antient Town; and whereas within the said Town of Littleport aforesaid there is, and for all the same Time there hath been an antient River called Wilney River, and upon the same River and across over the same for the whole Time abovesaid there hath been an antient Passage at the North-East Side of the same Town of Littleport, near the End of a Lane called Ferry-Lane, leading from the Town of Littleport aforesaid to the said River, for the passing and carrying over of the Subjects of this Realm of England willing to pass over and beyond that River, to wit, from a certain Place called the Ferry-Lane on the North-East Part thereof to a certain Place called Adventurous Bank, on the North-East Part of the same River across that River either forward or backward at their Will, for the passing and carrying over of their Horses, Mares and Geldings, which said passing and carrying over for the whole Time abovesaid until of late, to wit, the first Day of May in the 15th Year of the Reign of the Lord Charles the Second late King of England, &c. have been had and performed in a certain Ferry-boat kept by the Owners and Occupiers of the said Passage, and the Owners, Oc-

Declaration in Case against the Owners of a Ferry-boat for not keeping it in Repair.

Prescription in a Ferry and Toll for Passage.

PLEADINGS TO THE CASES.

Exception of
Inhabitants in
antient Mes-
suages from
paying Toll.

Prescription
for the Ex-
emption of
the said Inha-
bitants.

That the
Plaintiff is an
Inhabitant in
an antient
Messuage.

Breach in not
keeping a
Boat.

cupiers and Keepers of the said Passage and Ferry-boat for the Time being, for the better keeping and maintaining the same for the whole Time aforesaid, have taken and been accustomed to take of the said Subjects of this Realm of *England* so to be passed and carried over and beyond the said River, to wit, from the said Place called the *Ferry-Lane* to the said Place called *Adventurous Bank* across the said River (other than of the Inhabitants of the same Town of *Littleport* resiant in the antient Messuages or antient Cottages there) certain reasonable Rates or Toll or Custom, that is to say, one Halspenny for every Horse and Man riding thereon, and for every Led-Horse, Mare or Gelding one Farthing, and for every Horse, Mare or Gelding otherwise loaded one Penny, for such passing and carrying them over as before is set forth, to be had every Time of their passing over beyond the River aforesaid at the Passage aforesaid either forwards or backwards. And whereas also within the same Town of *Littleport* there is had, and from the whole Time aforesaid whereof the Memory of Man is not to the contrary there hath been had such an antient Custom, that is to say, that the Inhabitants of that Town resiant in the antient Messuages or antient Cottages there, have had and might have, and for the whole Time aforesaid have been accustomed to have Liberty of passing over the said River at the Passage aforesaid there for themselves, their Horses, Mares and Geldings in the Ferry-boat aforesaid, so as before is set forth, to be carried over either forwards or backwards at their Liberty, without any Payment whatsoever so to be had for such their passing over; and also whereas he the said *Isaac* on the first Day of *May* in the second Year of the Reign of our Lord *James* the Second late King of *England*, &c. and long before and from thence afterwards until this Time hath been and as yet is one of the Inhabitants of the said Town of *Littleport*, in a certain antient Messuage there then and as yet resiant, and for that Cause and Reason he the said *Isaac* by Virtue of the said Custom hath had and ought to have the Liberty of passing over the said River at the Passage aforesaid in the said Ferry-boat for himself, his Horses, Mares and Geldings in Form aforesaid, without any Payment whatsoever to be made for the same: Nevertheless the said *Edward* and *William* not being ignorant of the Premises, but contriving and maliciously intending him the said *Isaac* unjustly to aggrieve, and greatly to damnify and to deprive him of the Liberty of his aforesaid passing over the said River at the Passage aforesaid to be had in

the said Ferry-boat as before is set forth, and also to cause him the said *Isaac* wholly to lose the same, on the said first Day of *May* in the second Year abovesaid, and from thence until the Day of exhibiting the said Bill of him the said *Isaac* (they the said *Edward* and *William* being then and before and afterwards until this Time Owners, Occupiers and Keepers of the Passage and Ferry-boat abovesaid) had preserved or kept no Ferry-boat at the said Passage for the passing over of the Subjects of this Realm, and of their Horses, Mares and Geldings abovesaid, willing to pass over and beyond that River, but have for the Time abovesaid wholly omitted and neglected to do, have, preserve or keep the same, and no Ferry-boat there for the Time abovesaid, or any Part of that Time hath been, or as yet is there, although the said *Edward* and *William* on the said first Day of *May* in the second Year abovesaid and often afterwards at *Littleport* abovesaid were requested by the said *Isaac* to have such Ferry-boat at the Passage abovesaid, and to permit him the said *Isaac* to have his said Liberty there, so that he the said *Isaac* from the said first Day of *May* in the second Year abovesaid and from thence until this Time hath been and as yet is hindred and wholly deprived of his Liberty of passing over the River abovesaid at the said Passage in Form abovesaid to be had, according to the Custom abovesaid contrary to the said Custom, to the Damage of the said *Isaac* of 500*l.* and thereupon he brings Suit, &c.

And now at this Day, to wit, *Wednesday* next after fifteen Days of *Easter* in this same Term, until which Day the said *Edward* and *William* had leave to imparl to the said Bill and then to answer, &c. before the Lord the King and Lady the Queen at *Westminster* cometh as well the said *Isaac* by his Attorney abovesaid as the said *Edward* and *William* by *Joseph Sherwood* their Attorney; and the said *Edward* and *William* defend the Force and Injury when, &c.

and say that the abovesaid *Isaac* ought not to have or maintain his said Action thereof against them, because protesting that the passing and carrying of Persons, Horses, Mares and Geldings over and beyond the said River have not been had or done in any Ferry-boat kept for the passing and carrying over of Persons or Cattle in the Place where, and in Manner and Form as by the Declaration abovesaid is above supposed; and protesting that within the said Town of *Littleport* there is not, nor ever hath been such a Custom as in the Declaration abovesaid is above supposed and alledged; and protesting also that the said *Isaac* is not, nor ever hath been one of the Inhabitants of the said Town of *Littleport* re-

Imparlanee:

Protestation that the Passage was not in a Boat.

Further Protestation that there is no such Custom, and that Plaintiff is not an Inhabitant.

Plea, that Defendants have built a Bridge and keep it in Repair,

for which Reason they omitted to keep the Boat.

Reply, that he was not permitted to pass over any Bridge.

Demurrer.

stant in any antient Messuage there, in Manner and Form as by the said Declaration is above supposed, for Plea they the said *Edward* and *William* say that long before the said Time in which, &c. to wit, on the first Day of *May* in the fifteenth Year of the Reign of the said late King *Charles* the Second aforesaid, he the said *Edward* at his own proper Costs and Charges erected, built and placed in and upon the said River and over the same River at the Passage aforesaid a certain Bridge made of Wood and Stones for the Use, Easement, Passing, Carrying over of all and every of the Persons, Horses, Mares and Geldings there coming and willing to pass over and beyond the said River at the Passage aforesaid, which said Bridge so erected and placed there, he the said *Edward* from Time to Time and at all Times after the making thereof until this Time hath there well and sufficiently had, preserved and maintained, repaired and kept, so that he the said *Isaac*, and all and every the Persons, Horses, Mares and Geldings there coming and willing to pass over and beyond the said River at the Passage aforesaid from Time to Time and at all Times after the making and placing of the said Bridge there until this Time might and as yet may there go, return and pass upon the said Bridge over and beyond the said River without any Danger at the Passage aforesaid, more safely, better and more speedily than in a Ferry-boat; for which Reason they the said *Edward* and *William* had preserved or kept no Ferry-boat at the said Passage, but have omitted and neglected to do, have, preserve or keep the same, as it was lawful for them for the Cause aforesaid; and this they are ready to verify: Wherefore they pray Judgment if the said *Isaac* ought to have or maintain his said Action thereof against them, &c.

And the said *Isaac* saith that he by any Thing by the said *Edward* and *William* above alledged ought not to be barred from having his said Action thereof against them, because he the said *Isaac* saith that he was not permitted to have the Liberty of the Passage aforesaid by any Bridge over and beyond the River aforesaid, according to the Custom in the Declaration aforesaid mentioned, contrary to the Custom aforesaid; and this he is ready to verify: Wherefore he prays Judgment and his Damages by occasion of the Premises to be adjudged to him, &c.

And the said *Edward* and *William* say that the Plea aforesaid by the said *Isaac* in Manner and Form aforesaid above pleaded in reply, and the Matter in the same contained,

tained, are not sufficient in Law to have and maintain the said Action of him the said *Isaac* against them the said *Edward* and *William*, to which they the said *Edward* and *William* have no Necessity, nor are bound by the Law of the Land to answer in any Manner; and this they are ready to verify: Wherefore for want of a sufficient Replication in this Behalf, they the said *Edward* and *William* as before pray Judgment, and that the said *Isaac* may be barred from having his said Action against them the said *Edward* and *William*, &c.

And the said *Isaac* saith that the Plea aforesaid by him the said *Isaac* in Manner and Form aforesaid above pleaded in reply, and the Matter in the same contained, are good and sufficient in Law to have and maintain the said Action of him the said *Isaac* against them the said *Edward* and *William*; which said Plea and the Matter in the same contained he the said *Isaac* is ready to verify and prove as the Court, &c. And because the said *Edward* and *William* do not answer to that Plea, nor hitherto in any Manner deny it, he the said *Isaac*, as before, prays Judgment and his Damages by occasion of the Premises to be adjudged to him, &c. But because the Court of the said Lord the King and Lady the Queen now here are not yet advised of giving their Judgment of and upon the Premises, Day is thereupon given to the Parties aforesaid before the Lord the King and Lady the Queen at *Westminster* aforesaid until *Friday* next after the Morrow of the Holy *Trinity* to hear their Judgment of and upon the Premises, for that the Court of the said Lord the King and Lady the Queen now here are thereof not yet, &c. At which Day before the Lord the King and Lady the Queen at *Westminster* come the said Parties by their Attornies aforesaid: But because the Court of our Lord the King and Lady the Queen are not yet advised, (in like Manner the Entry is continued down until the first Day of the next *Trinity* Term by several Continuances of *Curia advisare vult*) At which Day before the Lord the King and Lady the Queen at *Westminster* come the said Parties by their Attornies aforesaid; upon which all and singular the Premises being seen and more fully understood by the Court of the said Lord the King and Lady the Queen now here, and mature Deliberation being thereupon had, it seems to the Court of the said Lord the King and Lady the Queen now here that the aforesaid Plea by the said *Isaac* in Manner and Form aforesaid above pleaded in reply, and the Matter in the same contained, are not sufficient in Law to have and

Joinder in
Demurrer.

Continuances
Curia advisare vult.

Judgment for
the Defen-
dants.

PLEADINGS TO THE CASES.

maintain the said Action of him the said *Isaac* against the said *Edward* and *William*, therefore it is considered that the said *Isaac* take nothing by his said Bill, but for his false Complaint he be in Mercy, &c. and that the said *Edward* and *William* go without Day thereupon, &c.

Pleas before the Lord the King at Westminster of the Term of the Holy Trinity in the tenth Year of the Reign of our Lord William the Third now King of England, &c. Roll 162.

Robins against Robins. 1 Ld. Raym. 503.

Declaration in
Case for ar-
resting Defen-
dant and hold-
ing him to
Bail upon
mesne Process,
where no Bail
was required
by Law.

Cornwal, (to wit) **B**E it remembered that heretofore, to wit, in the Term of *Easter* last past before our Lord the King at *Westminster* came *Stephen Robins* Gent. by *Edward Hoblyn* his Attorney, and brought into the Court of the said Lord the King then there his certain Bill against *John Robins* Gent. in the Custody of the Marshal &c. of a Plea of *Trespas* upon the Case; and there are Pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said Bill followeth in these Words, to wit, *Cornwal*, to wit, *Stephen Robins* Gent. complains of *John Robins* Gent. being in the Custody of the Marshal of the *Marshallsea* of our Lord the King before the King himself, for that, to wit, that whereas the said *John* never had any lawful Cause of Action against him the said *Stephen*, so that by the Law of this Realm of *England* the Body of him the said *Stephen* ought therefore to be taken and detained in Prison until he the said *Stephen* should find sufficient Bail to answer to him the said *John* in the same Cause: Nevertheless the said *John* well knowing the Premises, but contriving and maliciously intending him the said *Stephen* unjustly to aggrieve, oppress and damnify in this Behalt, and to impair and take away his Credit and Reputation as much as in him laid, he the said *John* on the 28th Day of *May* in the ninth Year of the Reign of our Lord *William* the Third now King of *England*, &c. at *Bodmyn* in the County aforesaid, by Pretence and Colour of certain mesne Process in Law caused the said *Stephen* to be arrested, and although he the said *Stephen* was always ready to appear upon such Process at the Day of the Return thereof to answer to him the said *John* according to the Exigency of the same Process, nevertheless the said *John* on the Day and Year aforesaid at *Bodmyn* aforesaid maliciously procured and caused the said *Stephen* to be imprisoned, and

to be there detained in Prison for the Space of six Months, for that only, because the aforesaid *Stephen* could not find sufficient Bail to answer to him the said *John* upon the Process aforesaid, by which the said *Stephen* was forced to expend great Sums of Money for his Maintenance in Prison aforesaid, and the necessary Business of him the said *Stephen* for that Time remained undone, and he the said *Stephen* in his Manner of Living was greatly injured, to the great Disturbance of his Mind, and to the manifest hurting of his Fame and Credit; whereupon the aforesaid *Stephen* saith that he is injured, and hath sustained Damage to the Value of fifty Pounds, and thereupon he brings Suit, &c.

And now at this Day, to wit, *Friday* next after the Morrow of the Holy *Trinity* in this same Term, until which Day the aforesaid *Stephen* had leave to imparl to the Bill aforesaid and then to answer, &c. before the Lord the King at *Westminster* cometh as well the said *Stephen* by his Attorney aforesaid as the aforesaid *John* by *Joseph Sherwood* his Attorney; and the said *John* defends the Force and Injury when, &c. and saith that he is not guilty thereof; and of this he puts himself upon the Country, and said *Stephen* thereof likewise: therefore let a Jury thereupon come before the Lord the King at *Westminster* on *Wednesday* next after three Weeks of the Holy *Trinity*, and who neither, &c. to recognize, &c. because as well, &c. The same Day is given to the Parties aforesaid there, &c.

Nota; The above Declaration having been adjudged to be bad as appears by the Report, here follows a Declaration for the like Cause of Action which is a good one, and was so determined to be, in the third Year of King George the Third.

Worcestershire, (to wit) *A.* *T. Spinster*, complains of *W.* Declaration
M. being in the Custody of for arresting
the Marshal of the *Marshalsea* of our Sovereign Lord the and holding
King before the King himself, for that the said *W. M.* Defendant to
liciously and injuriously contriving and intending to oppress, special Bail in
aggrieve and injure the said *A.* and to cause her the said a Case where
A. to be unjustly arrested and imprisoned for a large Sum no special Bail
of Money, and not only to deprive the said *A.* of her Liberty, was required
and to hinder her from going about her lawful Affairs and Business, but also to cause her the said *A.* without by the Course
any just or reasonable Cause to expend divers large Sums of of the Court.
Money on that Occasion, in the Term of the Holy *Trinity*
which was in the Year of our Lord 1761 did falsly,
X 4 unjustly

PLEADINGS TO THE CASES.

Sets out the
Writ of *Latitat*,

which was in-
dorfed to take
Bail for 13 *l*.

and the De-
fendant was
thereupon
arrested,

and forced to
give special
Bail.

Averment
that Defen-
dant was not
indebted in
any Sum for
which she
ought to have
been arrested.

unjustly and maliciously prosecute and cause to be prosecuted out of the Court of our said Lord the King before the King himself (the same Court being then and now here, to wit, at *Westminster* in the County of *Middlesex*) a certain Writ of our said Lord the King called a *Latitat*, directed to the then Sheriff of *Worcestershire*, by which said Writ the said then Sheriff of *Worcestershire* was commanded that he should take the said *A.* and one *John Doe*, if they should be found in his Bailiwick, and that he should keep them safely so that he might have their Bodies before the said Lord the King at *Westminster* on *Friday* next after the Morrow of *All Souls* then next ensuing to answer to the said *W. M.* in a Plea of *Trespass*, and also to a Bill of him the said *W.* against the said *A.* for twenty Pounds upon Promises, according to the Custom of the Court of our said Lord the King before the King himself to be exhibited, and that the said Sheriff should then have there that Writ; upon which said Writ the said *W. M.* afterwards, to wit, on the thirteenth Day of *October* in the Year aforesaid unjustly and maliciously caused to be indorfed that the said Sheriff should take Bail in that Suit for thirteen Pounds, to wit, at *Shipston upon Stower* in the said County of *Worcester*, by Colour and Pretext of which said Writ so indorfed as aforesaid the said *W. M.* afterwards and before the Return of that Writ, that is to say, on the twenty-sixth Day of *October* in the said Year of our Lord 1761 at *Shipston upon Stower* aforesaid in the said County of *Worcester* unjustly and maliciously caused and procured the said *A.* to be arrested and imprisoned, and to be kept and detained in Prison there for want of Bail for the Appearance of the said *A.* to that Suit for a long Space of Time, that is to say, from thence until the third Day of *December* then next ensuing, when she the said *A.* was discharged from the said Imprisonment upon her finding Bail in the Suit aforesaid, which she the said *A.* was forced and obliged to do, whereas in Truth and in Fact she the said *A.* at the Time of the Prosecution of the said Writ, and at the Time of the said Arrest and Imprisonment of her the said *A.* aforesaid, or at either of those Times was not indebted to the said *W. M.* in the said Sum of thirteen Pounds, nor in any Sum of Money for which she the said *A.* ought to have been arrested or imprisoned or held to bail as aforesaid; nor had the said *W. M.* at either of those Times any Cause of Action or Suit against the said *A.* for any Sum or Sums of Money for which she the said *A.* ought according to the Course and Practice of the said Court

Court of our said Lord the King before the King himself to be compelled to find or put in special Bail in that Suit, as by the said Writ so unjustly and maliciously prosecuted as aforesaid she the said *A.* was compelled to do. And the said *A.* further saith that the said Suit of the said *W. M.* is now wholly ended and determined, by reason of which Premisses the said *A.* hath not only been deprived of her Liberty, and hindered and obstructed in carrying on and transacting her lawful Affairs and Business during the Time above mentioned in this Behalf, but also was compelled and under a Necessity to expend and lay out, and did actually lay out and expend divers large Sums of Money as well for her the said *A.*'s Maintenance and Support during her said Confinement and Imprisonment, as also for her the said *A.*'s Enlargement and Discharge therefrom, to wit, at *Shipston upon Stower* aforesaid in the County of *Worcester* aforesaid, to the Damage of the said *A.* of five hundred Pounds, and therefore she brings Suit, &c.

Averment
that the said
Suit is ended.

The Grava-
men.

Pledges to prosecute, { *John Doe,*
and
Richard Roe.

Pleas before the Lord the King at Westminster of the Term of Saint Michael in the 11th Year of the Reign of the Lord William the Third now King of England, &c. Roll 377.

The Bishop of Salisbury against Phillips. 1 *Ld. Raym.* 535.

THE Lord the King hath sent to his beloved and faithful *George Treby* Knt. his Chief Justice of the Bench, his Writ close in these Words, to wit, *William* the Third by the Grace of God of *England, Scotland, France and Ireland* King, Defender of the Faith, &c. to his beloved and faithful *George Treby* Knt. his Chief Justice of the Bench, greeting: Forasmuch as in the Record and Process, and also in the giving of Judgment of the Plaint which was in our Court before you and your Companions our Justices of the Bench aforesaid, by our Writ between *William Phillips* Executor of the Will of *William Phillips* Gent. his Father lately deceased, and *Gilbert* Bishop of *Salisbury* and *John Berrow* Clerk, for that they the said Bishop should permit him the said *William Phillips* the then Plaintiff to present a fit Person to the Church of *Stanton*, otherwise *Stanten Fitzwarren*, otherwise *Stanton Fitzbert*

Writ of Error
in *Quare Im-
pedit.*

PLEADINGS TO THE CASES.

bert in the County of *Wilts*, which was void and did belong to his Gift, as it was said manifest Error hath intervened, to the great Damage of them the said Bishop and *John*, as by their Complaint we are informed: We willing that the Error (if any hath been) be in due Manner corrected, and full and speedy Justice done to them the said Bishop and *John* in this Behalf, do command you that if Judgment be given thereupon, then that you send to us distinctly and plainly under your Seal the Record and Process aforesaid, with all Things touching the same and this Writ, so that we may have them from the Day of *Easter* in five Weeks wheresoever we shall then be in *England*, that inspecting the Record and Process aforesaid we may cause farther to be done thereupon for the correcting that Error that which of Right and according to the Law and Custom of our Kingdom of *England* shall be meet to be done. Witness ourself at *Westminster* the 26th Day of *April* in the 11th Year of our Reign.

Hale.

The Return thereof.

The answer of George Treby Knt. Chief Justice within named.

The Record and Process of the Plaint whereof Mention is within made, with all Things touching the same, I send before the Lord the King wheresoever, &c. at the Day within contained, in a certain Record to this Writ annexed, as I am within commanded.

George Treby.

The Record of the Common Pleas.

Pleas inrolled at Westminster before George Treby Knt. and his Companions, Justices of our Lord the King of the Bench of the Term of the Holy Trinity in the 10th Year of the Reign of our Lord William the Third by the Grace of God of England, Scotland, France and Ireland King, Defender of the Faith, &c. in the Roll 1562.

Declaration in *Quare Impedit* by an Executor of the Grantee of the next Turn to present.

Wiltshire, (to wit) *Gilbert* Bishop of *Salisbury* and *John Berrow* Clerk, were summoned to answer to *William Phillips* Gent. Executor of the last Will and Testament of *William Phillips* Gent. his Father lately deceased, of a Plea that they permit him the said *William Phillips* the now Plaintiff to present a fit Person to the Church of *Stanton*, otherwise *Stanton Fitzwarren*, otherwise *Stanton Fitzberbert*, which is void and belongs to his Gift, &c. And whereupon the said *William Phillips* the now Plaintiff by

Dennis

Dennis Russell his Attorney saith, that whereas one *Richard Organ* and one *John Organ* were seised as of Fee and Right of the Advowson of the Church aforesaid as in Gross of itself, and being so seised thereof, the aforesaid *Richard Organ* and *John Organ* on the 26th Day of *June* in the 13th Year of the Reign of the Lord *James* the First late King of *England*, &c. at *Stanton* aforesaid in the County aforesaid, by their certain Indenture made between the aforesaid *Richard* by the Name of *Richard Organ* of *Dam-borne* in the County of *Berks*, Gent. of the one Part, and the aforesaid *John Organ* by the Name of *John Organ* of *Stanton* within the Hundred of *Highbworth* in the County of *Wilts* Gent. of the other Part, the Counterpart whereof sealed with the Seal of the aforesaid *John Organ* he the said *William Phillips* the now Plaintiff brings here into Court, the Date whereof is the same Day and Year, concluded and agreed between themselves that they the aforesaid *Richard Organ* and *John Organ* should from thenceforth be seised in Common not jointly of the Advowson of the Church aforesaid, that is to say, that the said *Richard Organ* should stand and be seised of and should have, hold and enjoy one Mediety of the said Advowson to him and his Heirs, and that the said *John Organ* should stand and be seised of and should have, hold and enjoy the other Mediety of the said Advowson to him and his Heirs; and that the said *Richard Organ* and *John Organ* and their several Heirs, so often as the said Church of *Stanton* should become void, should severally and respectively present by several Turns alternately in Manner and Form following, that is to say, that the said *Richard Organ* and his Heirs should present to the said Church in the first Turn thereof when the said Church should first and next happen to be void, and that the said *John Organ* and his Heirs should present to the said Church when the same then next should be void the second Time, and so the said *Richard Organ* and *John Organ* severally, and their several and respective Heirs, in their several Turns alternately, as the same Church at any Time from thence afterwards should become void, should present or might present their Clerks, according to the Order and Course concluded and agreed upon as before is set forth, as by the same Indenture among other Things more fully appears, by which they the said *Richard* and *John* were seised of the Advowson aforesaid to present to the same Church in Form aforesaid; and being so seised thereof, the aforesaid *Richard Organ* after the making of the Indenture aforesaid to begin his first Turn

Sets forth an Indenture of Agreement between Joint-tenants to present by Turns.

Profert in Curiam of the Indenture.

The first Presentation.

to

PLEADINGS TO THE CASES.

Avoidance by
Death.
The second
Presentation.

One Mediety
descends.

Covenant to
stand seised.

In Considera-
tion of Blood.

to the same Church being void, and as in his first Turn at Stanton aforesaid presented one *John Woodbridge* his Clerk, who upon the Presentation of him the said *Richard Organ* was there admitted and instituted in the same in the Time of Peace in the Time of the Lord *James* the First late King of *England*, &c. And afterwards the Church aforesaid became void by the Death of the aforesaid *John Woodbridge* there, whereby the said *John Organ* at Stanton aforesaid presented one *Thomas Hotchkis* his Clerk to the said Church being so void, as in the second Turn, who upon the Presentation of him the said *John Organ* was admitted and instituted in the same in the Time of Peace in the Time of the Lord *Charles* the First late King of *England*, &c. And the aforesaid *Richard Organ* and *John Organ* being so seised of the Advowson aforesaid, the aforesaid *Richard Organ* afterwards at Stanton aforesaid died seised of such his Estate thereof, by and after whose Death a Mediety of the Advowson aforesaid descended to one *John Organ* as Brother and Heir of the said *Richard Organ*, by which the same *John Organ* the Brother was seised of the Mediety of the Advowson aforesaid as of Fee and Right to present in Form aforesaid; and being so seised thereof afterwards, to wit, on the 25th Day of *August* in the 14th Year of the Reign of the said late King *Charles* the First, by a certain Indenture made between him the said *John Organ* of the one Part, and *Richard Hippesley* of *Stone Easton* in the County of *Somerset* Gent. Nephew of the said *John Organ* the Brother, that is to say, the second Son of *Elizabeth Hippesley* Widow, the natural Sister of the said *John Organ* the Brother, of the other Part, at Stanton aforesaid in the County aforesaid, the Counterpart whereof sealed with the Seal of the aforesaid *John Organ* the Brother he the said *William Phillips* the now Plaintiff brings here into Court, the Date whereof is the same Day and Year aforesaid; and in Consideration of the natural Love and Affection which he had and bore towards the said *Richard Hippesley*, and in Consideration of the Blood between them, and for the better Preferment and Advancement, Maintenance and Livelihood of the said *Richard Hippesley* and his Brother in the same Indenture afterwards named, he the said *John Organ* the Brother for himself and his Heirs covenanted, granted and agreed to and with the said *Richard Hippesley* and his Heirs, that he the said *John Organ* the Brother, his Heirs and Assigns, and every of them, and all and every other Person and Persons and their Heirs, who then were or from thence afterwards should stand and be seised of and in the said Mediety of the Advowson

son aforesaid, should stand and be seised of the same, to the Use and Behoof of the said *Richard Hippesley* and the Heirs of the Body of the said *Richard Hippesley* lawfully to be begotten; and for want of such Issue, to the Use and Behoof of *Robert Hippesley* the Brother of him the said *Richard Hippesley* and the Heirs of the Body of the said *Robert Hippesley* lawfully to be begotten; and for want of such Issue to the Use and Behoof of the said *John Organ* the Brother and his Heirs and Assigns for ever, and to no other Uses, Intents or Purposes whatsoever, as by the Indenture aforesaid last mentioned more fully appears; by Virtue of which said Indenture, and by Force of a certain Act made and provided in the Parliament of the Lord *Henry* the Eighth late King of *England*, holden at *Westminster* in the County of *Middlesex* on the fourth Day of *February* in the 27th Year of his Reign, of transferring Uses into Possession, the aforesaid *Richard Hippesley* was seised of the Mediety of the Advowson aforesaid as of Fee Tail and Right, the Remainder thereof in Form aforesaid, to wit: to present in Form aforesaid; and the aforesaid *Richard Hippesley* being so seised thereof afterwards at *Stanton* aforesaid in the County aforesaid died, by and after whose Death the said Mediety of the Advowson aforesaid descended to one *Richard Hippesley* Esq; as Son and Heir of the Body of the aforesaid *Richard Hippesley*, by which he the said *Richard Hippesley* the Son was seised of the said Mediety of the Advowson aforesaid as of Fee Tail and Right; and the said *Richard Hippesley* the Son being so seised thereof afterwards at *Stanton* aforesaid died without Issue of his Body issuing, by and after whose Death the said Mediety of the Advowson afterwards descended to one *John Hippesley* Esq; as the other Son and Heir of the Body of the aforesaid *Richard Hippesley* first named, by which the said *John Hippesley* was seised of the said Mediety of the Advowson aforesaid as of Fee and Right; and the said *John Hippesley* being so seised thereof, he the said *John Hippesley* afterwards, to wit, on the 16th Day of *January* in the 24th Year of the Reign of the Lord *Charles* the Second late King of *England*, &c. at *Stanton* aforesaid in the County aforesaid, by his certain Writing which he the said *William Phillips* the now Plaintiff (sealed with the Seal of the aforesaid *John Hippesley*) brings here into Court, the Date whereof is the same Day and Year, gave and granted to *Francis Symes* the Elder of *Kelmescot* in the County of *Oxford* Gent. and to *William Phillips* the Testator of *Eaton Hastings* in the County of *Berks* Gent. their Executors and Assigns, Assigns,

Of one Mediety to the Use of *R. H.* in Tail, Remainder in Tail to *R. H.* Remainder to the Use of the Covenantor in Fee.

Descent in Tail.

Second Descent in Tail to *R. H.*

who made a Grant of the next Avoidance to the Testator and *F. S.* their Executors and

PLEADINGS TO THE CASES.

Assigns, the first and next Advowson, Donation, Nomination, Presentation and free Disposition of the aforesaid Parish Church of *Stanton*, otherwise called *Stanton Fitzberbert*, otherwise *Stanton Fitzwarren*, willing and by his same Writing granting that it should and might be lawful to and for the said *Francis Symes* and *William Phillips* the Testator, their Executors and Assigns, to present to the said Church of *Stanton Fitzberbert*, otherwise *Stanton Fitzwarren*, whensoever or howsoever by Death, Resignation, Deprivation, Cession, Permutation, Dismission, or in any other Manner by which the same Church should then first and next happen to be void, any honest and learned Clerk for the then next Turn only, as by the Writing aforesaid more fully appears; by Virtue of which Grant they the said *Francis Symes* and *William Phillips* the Testator were possessed of the Advowson of the Church of *Stanton* aforesaid, that is to say, to present to the same Church when then first and next it should happen to be void; and being so possessed thereof, the aforesaid *Francis Symes* afterwards at *Stanton* aforesaid in the County aforesaid died, and the said *William Phillips* the Testator survived and was alone possessed of the Advowson aforesaid by Right of Survivorship, &c. And the aforesaid *William Phillips* the Testator being so possessed thereof, the Church aforesaid in the Life of the aforesaid *William Phillips* the Testator became void by the Death of the aforesaid *Thomas Hotchkis*, and as yet is void, which said Avoidance of the Church aforesaid by the Death of the aforesaid *Thomas Hotchkis*, is the first and next Avoidance of the Church aforesaid after the Grant aforesaid made to them the said *Francis Symes* and *William Phillips*, by the aforesaid *John Hippsley* in Form aforesaid, and for that reason it belonged to the said *William Phillips* the Testator in his Life-time to present a fit Person to the Church aforesaid so being void; and the aforesaid Bishop and *John Berrow* unjustly hindered him the said *William Phillips* the Testator, and the aforesaid *William Phillips* the Testator (the Church aforesaid being so void as before is set forth) afterwards, to wit, on the 21st Day of *June* in the sixth Year of the Reign of our Lord the now King and of the Lady *Mary* the late Queen of *England*, &c. at *Stanton* aforesaid in the County aforesaid made his last Will and Testament, and by the same constituted and ordained the aforesaid *William Phillips* the now Plaintiff Executor of his Will aforesaid, and afterwards there died, after the Death of which said *William Phillips* the Testator the aforesaid *William Phillips* the now Plaintiff

F. S. one of the Grantees of the Turn dies, and the Plaintiff's Testator survives.

Avoidance in Testator's Life-time by Death.

And it belonged to Testator in his Life-time to present, but Defendants hinder him

who made his Will, and the Plaintiff his Executor,

Plaintiff took upon himself the Burthen and Execution of who proved the Will aforesaid, and hath proved that Will in due Form the Will, &c. of Law, to wit, at *Stanton* aforesaid, and for that reason and so it at present it belongs to him the said *William Phillips* the belongs to the now Plaintiff to present a fit Person to the Church aforesaid so void, and the aforesaid Bishop and *John Berrow* unjustly disturb [hinder] him the said *William Phillips* the Plaintiff to present. the now Plaintiff; whereupon he the said *William Phillips* the now Plaintiff saith that he is injured, and hath sustained Damage to the Value of six hundred Pounds, and thereupon he brings Suit, &c. with this, that he the said *William Phillips* the now Plaintiff will verify that the aforesaid *John Hippeley* is still living and in full Life, to wit, at *Stanton* aforesaid in the County aforesaid, and that the Church of *Stanton*, otherwise *Stanton Fitzwarren*, otherwise *Stanton Fitzberbert*, is one and the same Church, and not another nor different; and he brings here into Court the Letters Profert of the Testamentary of the aforesaid *William Phillips* the Testator, by which it sufficiently appears to the Court here that he the said *William Phillips* the now Plaintiff is Executor of the Will aforesaid, and hath the Administration thereof, &c.

And the aforesaid *Gilbert* Bishop of *Salisbury* and *John Berrow* Clerk, by *John Carpenter* their Attorney come and Plea, Parson Berrow Clerk, by *John Carpenter* their Attorney come and Imparsonnee, defend the Force and Injury when, &c. And the aforesaid Defendants said *John Berrow* saith that he is Parson Imparsonnee of the admit the Church aforesaid of the Collation of the aforesaid Bishop; Avoidance, and the aforesaid Bishop and *John Berrow* further say that the aforesaid *William Phillips* the Executor ought not to have his Action aforesaid against them, because they say that the aforesaid Church of *Stanton*, otherwise *Stanton Fitzwarren*, otherwise *Stanton Fitzberbert*, became void by the Death of the aforesaid *Thomas Hotchkis* on the 20th Day of *September* in the Year of our Lord 1693, and was so void until the 23d Day of *April* in the Year of our Lord 1694, upon which Day at *Stanton* aforesaid the aforesaid Bishop, because at that Time six Months after the Avoidance of the same Church were fully elapsed and devolved, being the Ordinary of that Place, collated the aforesaid *John Berrow* to that Church then being void, as it was well lawful for him; and this they are ready to verify: Whereupon they pray Judgment if the aforesaid *William* the Executor ought to have his said Action against them, &c.

And the aforesaid *William Phillips* the Executor saith Replication, that he by any Thing above alledged ought not to be barred from having his Action aforesaid, because he saith that Time of the Avoidance, well

but says that within 6 Months the Testator, by Writing presented J. S. and requested the Bishop to admit him, who refus'd.

well and true it is that the aforesaid Church of *Stanton*, otherwise *Stanton Fitzwarren*, otherwise *Stanton Fitzherbert* aforesaid, became void by the Death of the aforesaid *Thomas Hotchkis* on the aforesaid 20th Day of *September* in the Year of our Lord 1693 aforesaid, as the aforesaid Bishop and *John Berrow* in pleading have alledged. But he the said *William Phillips* the Executor further saith that after the aforesaid 20th Day of *September* in the Year of our Lord 1693 aforesaid and before the said 23d Day of *April* in the Year of our Lord 1694 within six Months after the Death of the aforesaid *Thomas Hotchkis*, that is to say, on the 16th Day of *October* in the Year of our Lord 1693 the aforesaid *William Phillips* the Testator by his Writing sealed with his Seal, the Date whereof is the same 16th Day of *October* in the Year of our Lord 1693 at *Stanton* aforesaid in the County aforesaid presented one *John Symes*, Master of Arts, his Clerk, to the aforesaid Bishop, being then the Ordinary of the aforesaid Place of *Stanton*, otherwise *Stanton Fitzwarren*, otherwise *Stanton Fitzherbert*, and then and there requested the aforesaid Bishop to admit and institute him the said *John Symes* to the Church aforesaid so being void by the Death of the aforesaid *Thomas Hotchkis*, which said *John Symes* the aforesaid Bishop then and there absolutely refused to admit and institute to the Church aforesaid upon the aforesaid Presentation of the said *William Phillips* the Testator, and hindered him the said *William Phillips* the Testator to present; and this he is ready to verify; wherupon he prays Judgment and his Damages by occasion of the Hinderance [or Disturbance] aforesaid, and also a Writ to the aforesaid Bishop, to be adjudged to him, &c.

Rejoinder admits the Presentation, but says that J. S. took it away and desired Time to prepare himself for Examination, and never came again to be examined,

And the aforesaid Bishop and *John Berrow* say that well and true it is that the aforesaid *William Phillips* the Testator, by his Writing sealed with his Seal, presented the aforesaid *John Symes*, as he the said *William* the Executor above in replying hath alledged: But they the said Bishop and *John Berrow* further say that afterwards and within six Months after the Avoidance of the Church aforesaid, that is to say, on the aforesaid 16th Day of *October* in the Year of our Lord 1693 aforesaid, the aforesaid *John Symes* at *Stanton* aforesaid brought the Presentation aforesaid to the aforesaid Bishop, and requested the aforesaid Bishop to give the said *John Symes* a few Days to prepare himself to be examined of his Sufficiency in Literature to have the Church aforesaid, that the aforesaid Bishop thereupon, up-
on

on the Request of the aforesaid *John Symes*, then and there gave Leave to the aforesaid *John Symes* to go away and there to return to the aforesaid Bishop within three Days next following to be examined of his Sufficiency aforesaid, which said three Days were ended long before the End of six Months after the Avoidance of the Church aforesaid by the Death of the aforesaid *Thomas Hotchkis*, that is to say, by the Space of one Month, to wit, at *Stanton* aforesaid. And the aforesaid Bishop and *John Berrow* further say that he the said Bishop for the aforesaid three Days afterwards there was ready to examine the aforesaid *John Symes* of his Sufficiency aforesaid, and that the aforesaid *John Symes* neither within the aforesaid three Days nor ever afterwards came again, nor offered himself to the aforesaid Bishop to be examined of his Sufficiency aforesaid, by which the aforesaid Church remained void for the Space of six Months and upwards after the aforesaid Avoidance by the Death of the aforesaid *Thomas Hotchkis*, upon which he the said Bishop collated the aforesaid *John Berrow* to that Church so void, which said *John Berrow* was inducted in the same Church in due Form of Law; without this, that the aforesaid Bishop absolutely refused to admit and institute the aforesaid *John Symes* to the Church aforesaid upon the Presentation of the aforesaid *William Phillips* the Testator, as the aforesaid *William Phillips* the Executor hath above alledged; and this they are ready to verify: Whereupon they pray Judgment, and that the aforesaid *William* the Executor may be barred from his Action aforesaid, &c.

so the Bishop
collated *J. B.*
the other De-
fendant,
and traverses
that he refus-
ed to admit
J. S.

And the aforesaid *William Phillips* the Executor as before saith, that the aforesaid Bishop absolutely refused to admit and institute the aforesaid *John Symes* to the Church aforesaid upon the Presentation of the aforesaid *William Phillips* the Testator, as the aforesaid *William Phillips* the Executor hath above in replying alledged; and he prays that this may be inquired of by the Country, and the aforesaid Bishop and *John Berrow* likewise, &c. therefore the Sheriff is commanded that he cause to come here from the Day of the Holy *Trinity* in three Weeks twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. At which Day the Parties come here, &c. and the Sheriff hath not sent the Writ, therefore as before the Sheriff is commanded that he cause to come here from the Day of Saint *Michael* in three Weeks twelve, &c. to recognize in Form aforesaid, &c. At which Day here come the Parties aforesaid, &c. and the Sheriff hath not sent the Writ, therefore *ve.*

Surrejoinder
and Issue upon
the Traverse.

Venire facias
awarded.

The Sheriff
non misit Bre-
therefore *ve.*

Nisi prius.

*Postea retur-
ned.*

Verdict that
the Bishop re-
fused to ad-
mit *J. S.* upon
the Plaintiff's
Testator's
Presentation.
And that the
Church is full
of the Colla-
tion of the
Bishop,
and is of the
yearly Value
of 120*l.*
and assesses 40*s.*
Costs,
which are
not respected,
there being
no Cost by
Law in *Quare
imp.*

therefore as before the Sheriff is commanded that he cause to come here in eight Days of the Purification of the Blessed *Mary* twelve, &c. to recognize in Form aforesaid &c. At which Day the Jury between the Parties aforesaid of the Plea aforesaid was thereupon respited between them here until this Day, that is to say, from the Day of *Easter* in fifteen Days then next following, unless the Justices of our Lord the King assigned to take the Assizes in the County aforesaid by Form of the Statute, &c. on *Saturday* the 11th Day of *March* next, past, at *New Sarum* in the County aforesaid before come: And now here at this Day comes the aforesaid *William* by his Attorney aforesaid; and the aforesaid Justices assigned to take the Assizes before, &c. have sent here their Record in these Words, (to wit) Afterwards on the Day and at the Place within contained before *Thomas Rokeby* Knt. one of the Justices of the Lord the King assigned to hold Pleas before the King himself, and *John Powell* Knt. one of the Justices of the said Lord the King of the Bench, Justices of him the said Lord the King assigned to take the Assizes in the County of *Wilts* by Form of the Statute, &c. came as well the within named *William Phillips* Gent. the Executor of the last Will and Testament of *William Phillips* Gent. his Father lately deceased, as the within written *Gilbert* Bishop of *Salisbury* and *John Berrow* Clerk, by their Attornies within contained; and the Jurors of the Jury, whereof Mention is within made, being called likewise came, who being chosen, tried and sworn to speak the Truth of the Matter within contained, say upon their Oath that the aforesaid *Gilbert* Bishop of *Salisbury* within named absolutely refused to admit and institute the aforesaid *John Symes* to the Church within mentioned upon the Presentation of the aforesaid *William Phillips* the Testator, as the aforesaid *William Phillips* the Executor hath within in replying thereupon alledged. And the Jurors aforesaid upon their Oath further say that the Church aforesaid is full of the aforesaid *John Berrow* of the Collation of the aforesaid *Gilbert* Bishop of *Salisbury*, as by him is within alledged, and that the Church aforesaid is and at the Time when, &c. was of the Value of 120*l.* by the Year in all Issues beyond Repries; and the Jurors aforesaid assess the Damages of him the said *William Phillips* the Executor for his Costs and Charges by him laid out about his Suit in this Behalf to forty Shillings, therefore no respect being had to the aforesaid forty Shillings of the Damages, Costs and Charges aforesaid by the Jury aforesaid by occasion of the Hinder-

ance

ante [Disturbance] aforesaid assessed, because such Damages or Costs by the Law of the Land in this Case are in no wise to be adjudged, it is considered that the said *William Phillips* the Executor do recover against the aforesaid Bishop of *Salisbury* and *John Berrow* his Presentation to the Church aforesaid, and his Damages to the Value of that Church for the half of one Year, which in themselves amount to sixty Pounds by the Jury aforesaid in Form aforesaid assessed; and let him have a Writ to the Archbishop of *Canterbury*, Primate of all *England* and Metropolitan of that Place (for that the aforesaid Bishop of *Salisbury* is a Party, &c. because the said *John Berrow* is admitted and instituted to the same Church upon the Collation of the aforesaid Bishop of *Salisbury*, and is inducted in the same) to remove the aforesaid *John Berrow* from that Church, and to admit a fit Person to the said Church upon the Presentation of the aforesaid *William Phillips* the Executor; and the aforesaid Bishop of *Salisbury* and *John Berrow* in Mercy, &c. Afterward, that is to say, on Monday next after three Weeks of Saint *Michael* in this same Term before the Lord the King at *Westminster* come the aforesaid Bishop and *John Berrow* by *Adrian Moore* their Attorney, and say that in the Record and Process aforesaid, and also in the giving of the Judgment aforesaid, there is manifest Error in this, (to wit) That by the Record aforesaid it appears that the Judgment aforesaid in Form aforesaid given was given for the aforesaid *William Phillips* against the aforesaid Bishop and *John Berrow*, where by the Law of the Land of this Realm of *England* that Judgment ought to have been given for the aforesaid Bishop and *John Berrow* against him the said *William Phillips*, therefore in that there is manifest Error; there is also Error in this, (to wit) That the Record aforesaid now here sent before our Lord the King is defective in this, (to wit) that the original Writ, and the Return of the same between the Parties aforesaid in the Plea aforesaid are wholly omitted out of that Record, and as yet remain in the Custody of the Keeper of the Writs of the Lord the now King of the Bench not certified to him the said Lord the King; and they the said Bishop and *John Berrow* pray a Writ of the said Lord the now King to be directed to the Keeper of the Writs of our said Lord the now King of the Bench aforesaid to certify the Writ aforesaid, together with the Return of the same Writ to the said Lord the King, and it is granted to them, &c. By which it is commanded to *William*

Judgment, and a Writ to the Archbishop awarded.

Mercy. Errors assigned.

Diminution alledged.

Certiorari to the *Custos Breviarum* of C. B.

to search for
and send the
Original to
the King's
Bench.

liam Thursby Esq; Keeper of the Writs of the Lord the King of the Bench aforesaid, that having searched the original Writs of the County of *Wilts* of the Term of the Holy Trinity in the eighth Year of the Reign of the said Lord the now King being in his Custody of Record, he do send without Delay what he shall find in the same concerning the Writ aforesaid, together with the whole Return of the same Writ, as fully and intisely as they remain in his Custody to the Lord the King wheresoever, &c. together with the Writ of the said Lord the King to him thereupon directed, &c. which said Keeper of the Writs by Virtue of that Writ to him thereupon directed hath certified to him the said Lord the King, that, having searched the original Writs of his County of *Wilts* of the aforesaid Term of the Holy Trinity in the eighth Year of his Reign affiled of Record in his Custody, there is had a certain original Writ between the Parties aforesaid of the Plea aforesaid in his Custody affiled of the aforesaid Term, the Tenor of which said Writ, together with the Return of the same, follows in these Words, *William* the Third by the Grace of God

The Original of England, Scotland, France and Ireland King, Defender of Writ and the the Faith, &c. To the Sheriff of *Wiltshire*, greeting: Return there- of.

Command *Gilbert* Bishop of *Salisbury* and *John Berrow* Clerk, that justly and without Delay they permit *William Phillips* Executor of the Will of *William Phillips* his Father lately deceased, to present a fit Person to the Church of *Stanton*, which is void and belongs to his Gift as he saith; and whereupon he complains that the aforesaid Bishop and *John* unjustly hinder [disturb] him, and unless they will do this, and the aforesaid Executor shall make you secure of prosecuting his Claim, then summon by good Summoners the aforesaid Bishop and *John* that they be before our Justices at *Westminster* from the Day of the Holy Trinity in fifteen Days, to shew why they will not do this; and have you there the Summoners and this Writ. Witness *Thomas* Archbishop of *Canterbury*, and the Rest of the Keepers and Justices of the Realm at *Westminster* the 28th Day of *May* in the 8th Year of our Reign. *Hale*. Effoin for the Bishop, adjourned for the Bishop until three Weeks from the Day of Saint *Michael*, the same Day, for the Clerk, of Effoin. For the Clerk, adjourned until the Morrow of Saint *Martin*, the same Day for the Bishop. *W. Hall*. Pledges of Prosecuting, *John Doe* and *Richard Roe*. Summoners *Thomas Eyre*, *John Russell*. *Edward Somner* Esq; Sheriff. Which said Writ of *Certiorari* together with the Return thereof is filed among the Records with- out

Effoins.

Pledges,
Summoners.

out Day of that Term. And hereupon the aforesaid *William Phillips* by *Joseph Sherwood* his Attorney immediately here in Court likewise comes, and thereupon the aforesaid Bishop and *John Berrow* (as before) say, that in the Record and Process aforesaid, and also in the giving of the Judgment aforesaid, there is manifest Error, alledging the Errors aforesaid by them in Form aforesaid above alledged, and pray that the Judgment aforesaid for the Errors aforesaid and others being in the Record and Process aforesaid may be reversed, annulled and wholly had for nothing and that they may be restored to all Things which they have lost by occasion of the Judgment aforesaid; and that the Court of the said Lord the King now here may proceed to the Examination as well of the Record and Process aforesaid, as of the Matters aforesaid above assigned for Errors; and that the aforesaid *William* may rejoin to the Errors aforesaid; upon which he the said *William* saith that neither in the Record and Process aforesaid, nor in the giving of the Judgment aforesaid, is there any Error; and he likewise prays that the Court of the said Lord the King now here do proceed to the Examination as well of the Record and Process aforesaid as of the Matters aforesaid above assigned for Error; and that the Judgment aforesaid in all Things may be affirmed; but because the Court of the said Lord the King now here are not yet advised of their Judgment to be given of and upon the Premises, Day is thereupon given to the Parties aforesaid before the Lord the King until——wheresoever, &c. of hearing their Judgment thereupon, for that the Court of the said Lord the King now here are not yet thereof, &c.

The same Errors as before.

In nullo est erratum,

and prays the Judgment may be affirmed.

The Judgment was affirmed. See the Report.

Pleas before the Lord the King at Westminster of the Term of Easter in the 12th Year of the Reign of William the Third now King of England, &c. Roll 108.

Hilliard against Cox. 1 Ld. Raym. 562.

Berkshire, (to wit) **B**E it remembered that heretofore, to wit, in the Term of Saint Michael last past before our Lord the King at *Westminster* came *Daniel Hilliard* Clerk Administrator of all and singular the Goods and Chattles, Rights and Credits which were of *John Cox* deceased at the Time of his Death, who died intestate, by *Edward Chapman* his Attorney, and brought into the Court of the said Lord the King then there his certain

PLEADINGS TO THE CASES.

Assumpsit
by an Administrator for
Goods sold
and delivered.

*Quantum Val-
ebant.*

certain Bill against *Thomas Cox* in the Custody of the Marshal, &c. of a Plea of Trespass upon the Case; and there are Pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said Bill followeth in these Words, to wit, *Berkshire*, to wit, *Daniel Hilliard* Clerk, Administrator of all and singular the Goods and Chattles, Rights and Credits which were of *John Cox* deceased at the Time of his Death, who died intestate, complains of *Thomas Cox*, being in the Custody of the Marshal of the *Marshalsea* of the Lord the King before the King himself, for that, to wit, that whereas the aforesaid *Thomas* on the first Day of *March* in the 11th Year of the Reign of our Lord *William* the Third now King of *England* &c. at *Farringdon* in the County aforesaid, was indebted to the aforesaid *John* in his Life-time in one hundred Shillings of lawful Money of *England* for divers Goods, Wares and Merchandizes of him the said *John* by the said *John* before that Time in his Life-time to the said *Thomas*, at the special Instance and Request of him the said *Thomas* sold and delivered; and being so indebted, the aforesaid *Thomas* in Consideration thereof afterwards, to wit, the same Day and Year at the Place aforesaid assumed upon himself, and to him the said *John* in his Life-time then and there faithfully promised that he the said *Thomas* the said 100 s. to the aforesaid *John* when he should be thereunto afterward requested would well and faithfully pay and satisfy. And also whereas afterwards, to wit, on the second Day of *March* in the Year aforesaid at *Farringdon* aforesaid, in Consideration that the aforesaid *John* in his Life-time, at the like Instance and Request of him the said *Thomas* had sold and delivered to him the said *Thomas* divers other Goods, Wares and Merchandizes of him the said *John*, the aforesaid *Thomas* assumed upon himself, and to the said *John* then and there faithfully promised that he the said *Thomas* would well and truly pay and satisfy to him the said *John* so much Money for the Goods, Wares and Merchandizes aforesaid last mentioned, as those Goods, Wares and Merchandizes were reasonably worth at the Time of the Sale and Delivery of the same, when he should be thereunto afterwards requested. And the said *Daniel* in Fact saith that the Goods, Wares and Merchandizes aforesaid last mentioned at the Time of the Sale and Delivery of the same were reasonably worth another hundred Shillings of like lawful Money of *England*, to wit, at *Farringdon* aforesaid, and thereof he the said *Thomas* then and there had Notice: Nevertheless the said *Thomas* not at

all regarding his said several Promises and Undertakings Breach. made in Manner aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the aforesaid *John* in his Life-time and the aforesaid *Daniel* after the Death of him the said *John* in this Behalf, hath not paid the said several Sums of Money to the said *John* in his Life-time, or to the aforesaid *Daniel* after the Death of the said *John*, (to which said *Daniel* Administration of all and Letters of singular the Goods and Chattles, Rights and Credits which Administration were of the aforesaid *John* at the Time of his Death after the Death of him the said *John* was in due Manner committed by *Joseph Woodward* Doctor of Laws, and Archdeacon of the Archdeaconry of *Berks* Official lawfully constituted, to wit, on the 10th Day of *April* in the Year of our Lord 1699 at *Farringdon* aforesaid, to which said Official the committing of the Administration aforesaid in this Behalf of Right did belong) nor hath in any wise satisfied them or either of them for the same, although to do this the aforesaid *Thomas* after the Death of him the said *John* and after the Administration aforesaid in Form aforesaid committed, to wit, on the 20th Day of *April* in the 11th Year above said at *Farringdon* aforesaid was requested by the aforesaid *Daniel*, but hath altogether refused to pay or in any wise to satisfy the same to the said *John* in his Life-time and to the aforesaid *Daniel* after the Death of him the said *John*, and as yet refuses to pay or satisfy the same to the said *Daniel*; whereupon he the said *Daniel* saith that he is injured, and hath sustained Damage to the Value of 10 *l.* and thereupon he brings Suit, &c. And he the said *Daniel* brings here into Court the Letters of Administration of the aforesaid *Joseph Woodward*, which testify the Commission of the Administration aforesaid in Form aforesaid, the Date whereof is on the Day and Year above said, &c.

Profert of the
Letters of Ad-
ministration.

And now at this Day, to wit, *Wednesday* next after fifteen Days of *Easter* in this same Term until which Day the aforesaid *Thomas Cox* had leave to imparl to the Bill aforesaid and then to answer &c. before the Lord the King at *Westminster* comes as well the said *Daniel Hilliard* by his Attorney aforesaid as the said *Thomas Cox* by *Edward Serle* his Attorney; and the said *Thomas Cox* defends the Force and Injury when &c. and prays Oyer of the Letters of Administration aforesaid now brought here into Court and in the Declaration aforesaid above specified, and they are read to him in these Words, to wit, *Joseph Woodward* Doctor of Laws, Archdeacon of the Archdeaconry of *Berks* Official

Impar lance.

Defendant
prays Oyer of
the Letters of
Administra-
tion,

PLEADINGS TO THE CASES.

icial lawfully constituted, to our beloved in Christ *Daniel Hilliard* Clerk, Principal Creditor of *John Cox* while he lived, of *Newbury* within the County and Archdeaconry of *Berks* aforesaid Grocer, lately deceased, greeting in the Lord: Whereas the said *John Cox* (so as aforesaid) deceased lately died intestate, we therefore desiring that the Goods, Rights and Credits of the said deceased be well and faithfully administred, and converted and disposed to be administred to pious Uses, therefore for the well and faithfully disposing of the Goods, Rights and Credits of the aforesaid deceased, and also for demanding, collecting, levying and requiring all Credits whatsoever of the said deceased, and which belonged to the said deceased whilst he lived and at the Time of his Death, and for the Payment of what the said deceased at such Time of his Death was indebted, as far as such Goods, Rights and Credits to this extend, according to the Value thereof, it is permitted to you, in whose Fidelity we do in this Behalf confide, being sworn in due Form of Law upon God's Holy Evangelists, well and faithfully to administer the same, and to make a full and faithful Inventory of all and singular the Goods, Rights and Credits of the said deceased, and to exhibit the same into the Registry of the said Archdeacon of *Bucks* aforesaid on or before the first Day of the Month of *June* next ensuing, and also to render thereof a full and true Account, Calculation or Estimation of and concerning your Administration on or before the first Day of *March* which shall be in the Year of our Lord 1699. By the Tenor of these Presents we commit full Power, and ordain, depute and constitute you by these Presents Administrator of all and singular the Goods, Rights and Credits of the said deceased, (*Ann Cox* the Widow and Relict of the same deceased having first renounced in Writing the Administration of the Goods, &c.) Dated at *Oxford* under the Seal of our Office on the aforesaid 10th Day of *April* in the Year of our Lord 1699. which being read and heard, he the said *Thomas* saith that the aforesaid *Daniel* ought not to have or maintain his said Action thereof against him, because he saith that he the aforesaid *Thomas* at the Time of the Death of the aforesaid *John Cox*, and at the Time of the committing of the Administration aforesaid, and a long Time before was an Inhabitant and resident in the City of *Oxford* in the County of *Oxford*, which said City is and always hath been within the Diocese of *Oxford*, and out of the Archdeaconry of *Berks* aforesaid and the Jurisdiction of the Archdeacon of that Archdeaconry, which

and pleads that at the Time of the Death of the Intestate he (Defendant) was an Inhabitant in another Diocese.

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said Archdeaconry and the whole County of *Berks* aforesaid are and always have been within the Diocese of *Salisbury* and not within the Diocese of *Oxford*; by which the committing of the Administration of all and singular the Goods and Chattels, Rights and Credits which were of the aforesaid *John Cox* at the Time of his Death of Right did belong to *Thomas* by Divine Providence then and as yet Archbishop of *Canterbury*, by reason of his Prerogative, and not to the aforesaid Archdeacon of the Archdeaconry of *Berks*, or any other inferior Judge; and the aforesaid Letters of Administration brought here into Court are void and of no Value in Law, and this he is ready to verify: Whereupon he prays Judgment if the aforesaid *Daniel* ought to have or maintain his Action thereupon against him, &c.

And the aforesaid *Daniel Hilliard* saith that he by any Special Thing by the said *Thomas Cox* above in pleading alledged murrer, ought not to be barred from having his said Action thereupon against him the said *Thomas*, because he saith that the Plea aforesaid by him the said *Thomas* in Manner and Form aforesaid above pleaded, and the Matter in the same contained, are not sufficient in Law to bar him the said *Daniel* from having his said Action thereupon against him the said *Thomas*; to which said Plea in Manner and Form aforesaid above pleaded he the said *Daniel* hath no Necessity, nor is he bound by the Law of the Land in any Manner to answer; and this he is ready to verify: Wherefore for want of a sufficient Plea in this Behalf, he the said *Daniel* prays Judgment and his Damages by occasion of the Premises to be adjudged to him, &c. And for Causes of this Demurrer in Law according to the Form of the Statute in such Case made and provided, he the said *Daniel* demonstrates and sheweth to the Court here these Causes following, that is to say, for that it doth not appear by the Plea aforesaid that the said *Thomas Cox* was not an Inhabitant within the Diocese of the Bishop of *Salisbury* at the Time of the Death of the said *John Cox*, and that the said Plea is uncertain and wants Form, &c.

And the aforesaid *Thomas Cox* saith that the Plea aforesaid Joinder in Demurrer. by him the said *Thomas* in Manner and Form aforesaid above pleaded, and the Matter in the same contained, are good and sufficient in Law to bar him the said *Daniel* from having his said Action thereupon against him the said *Thomas*; which said Plea and the Matter in the same contained he the said *Thomas* is ready to verify and prove as the Court, &c. And because the aforesaid *Daniel* doth not answer to that

PLEADINGS TO THE CASES.

*Curia ad-
sare vult.*

that Plea, nor hitherto in any wise denies it, he the said *Thomas* as before prays Judgment, and that the aforesaid *Daniel* may be barred from having his said Action thereupon against him the said *Thomas*, &c. But because the Court of the said Lord the King now here are not yet advised of giving their Judgment of and upon the Premises, Day is thereupon given to the Parties aforesaid before the Lord the King at *Westminster* until———next after———to hear their Judgment thereupon, for that the Court of the said Lord the King now here are not yet, &c.

Sir Creswell Levinz against Randolph. 1 Ld. Raym.
594.

This was Debt upon a Bond given by a Member of Grays-Inn for the Benefit of the Society upon his Admission.

THE Defendant craves Oyer of the Bond and Condition, which was, That if the above bounden *Henry Randolph* shall from Time to Time and at all Times hereafter well and truly pay or cause to be paid all such Sum and Sums of Money as shall become due by him for Commons, Vacations, Pensions, Dues and Duties whatsoever belonging unto *Grays-Inn*, and shall observe all such Order and Orders of Pensions as shall be made from Time to Time and at all Times hereafter in *Grays-Inn* aforesaid, that then, &c. Upon which the Defendant pleaded, "That he from the Time of the making of the Writing aforesaid until the Day of exhibiting the Bill aforesaid hath well and faithfully paid all Sums of Money, and observed all the Orders in the Condition aforesaid specified, mentioned and contained on his Part to be paid and observed according to the Form and Effect of the same Condition, to wit, at the Parish of Saint *Andrew* aforesaid in the County aforesaid; and this he is ready to verify, &c."

Replication.

And the aforesaid *Creswell* saith that he by any Thing by the aforesaid *Herbert* above in pleading alledged ought not to be barred from having his Action aforesaid thereof against him, because protesting that the aforesaid *Herbert* hath not paid any Sums of Money, nor observed any Orders in the Condition aforesaid specified on his Part to be paid and observed according to the Form and Effect of the same Condition, for Plea the said *Creswell* saith that *Grays-Inn* aforesaid, commonly called *Grays-Inn* in the aforesaid Parish of Saint *Andrew Holborn* in the County aforesaid

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foresaid is, and for a long Time, and for a long Continuance past hath been an antient Inn of Court, and an antient, laudable and honourable Society of Gentlemen studying the Laws of this Realm of *England*, called an Inn of Court, and also one of the four Societies and Inns of Court of this Realm of *England*, of and in which, or in any, or one of those four Inns and Societies all and singular Gentlemen and Persons studying the Laws of *England* to be called to, professed and allowed at the Bar, and for Counsellors at Law, are admitted, educated and approved, and for all the Time aforesaid have been, and have been accustomed so to be, before they are so called to the Bar, or are, have been; or could be professed and allowed Counsellors at Law, in which said *Grays-Inn* and Society there are, and for all the Time aforesaid there have been several Degrees of Gentlemen of that Society, and amongst others, one, and a principal Degree, which consists of Readers and their Assistants, which said Readers and Assistants are, and are named Benchers of *Grays-Inn* or the Society, and such Benchers for the Time being are, and for all the Time aforesaid have been Governors and Rulers of that Society and Inn, having the Care (amongst other Things) of examining, calling to the Bar, and professing and allowing Students and Members of the said Society for Counsellors at Law, one of which said Benchers chosen thereunto, by and amongst themselves from Time to Time, is, and hath been named the Treasurer of *Grays-Inn* aforesaid, and that Name and Office for two Years together usually, or thereabouts, hath, exercises, enjoys, and occupies and uses, and hath used for all the Time aforesaid to have, exercise, enjoy and occupy; which said Treasurer for the Time being amongst other Things, as belonging to his said Office, taketh and hath taken, and for all the Time aforesaid hath been accustomed to take of, and from every Person there called to the Bar, and professed and allowed for a Counsellor at Law by the Benchers of the said Society, or *Grays-Inn*, such Writing obligatory with such Condition above specified, at and upon such his calling to the Bar there, and every Person so called to the Bar, and also every Person admitted into the same Society (while he is one of the Members thereof) hath paid and for all the Time aforesaid hath been accustomed to pay to such Treasurer for the Time being for the Use of the said Society a certain little Sum of Money, to wit, three Shillings and four Pence yearly in the Name of his Pensions, to wit, twelve Pence in every Term of Saint *Michael*, and twelve Pence in every Term of

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of Saint *Hilary*, and one Shilling and four Pence for the Term of *Easter* and the Term of the Holy *Trinity*, towards the sustaining of the publick and necessary Charges, Expences and Costs of the Society aforesaid, to wit, at *Grays-Inn* aforesaid in the Parish aforesaid; and the said *Creswell* further saith that at the Time of making the Writing aforesaid he himself was one of the Benchers of that Society and Treasurer of *Grays-Inn* aforesaid, being before thereunto in due Manner chosen, to wit, at that Inn in the said Parish; and that the aforesaid *Herbert* (then, and before being one of the Gentlemen and Members of the same Society) then and there by the Benchers of that Society and Inn was called to the Bar, and allowed and professed a Counsellor at Law according to the laudable Custom thereof for all the Time aforesaid there used, and thereupon he then and there made the said Writing obligatory with the Condition aforesaid in Form aforesaid to him the said *Creswell*, and as yet is one of the Members of that Society there, and that on the last Day of the Term of the Holy *Trinity* in the 9th Year of the Reign of our Lord *William* the Third now King of *England*, &c. (one *Daniel Bedingfield* Esq; then, and before, and afterward being Treasurer of the Society of *Grays-Inn* aforesaid) the Sum of 3*s.* 4*d.* for the Pensions of him the said *Herbert* belonging to the said Inn for one whole Year then ended was in arrear and as yet is unpaid, contrary to the Form and Effect of the Condition aforesaid; and this he is ready to verify: Whereupon he prays Judgment and his Debt aforesaid together with his Damages by occasion of the Detention of that Debt to be adjudged to him, &c.

W. Dixon,
L. Agar.

To this Replication the Defendant demurred and shewed for Cause, That by the Plea aforesaid it doth not appear that he the said *Herbert* hath in any Manner broken the Condition of the said Writing obligatory, and that it is uncertain and wants Form, &c.

Geo. Barrett.

The Plaintiff joined in Demurrer. Judgment for the Plaintiff.

Pleas

Pleas before the Lord the King at Westminster of the Term of Saint Hilary in the 13th Year of the Reign of King William the Third. Roll 460.

Ashby against White and others. 2 Ld. Raym. 938.

Buckinghamshire, (to wit) MATTHIAS Ashby complains of William White,

Richard Talbois, William Bell and Richard Heydon, being in the Custody of the Marshal of the Marshalsea of the Lord the King before the King himself, for that, to wit, That whereas on the 26th Day of November in the 12th Year of the Reign of the Lord the now King, a certain Writ of the said Lord the now King issued out of the Court of Chancery of him the said Lord the now King at Westminster in the County of Middlesex, directed to the then Sheriff of Buckinghamshire aforesaid, reciting that the said Lord the King, by the Advice and Assent of his Council, for certain arduous and urgent Businessses concerning him the said Lord the King, the State, and the Defence of his Realm of England, and of the Church of England, had ordained his certain Parliament to be holden at his City of Westminster on the sixth Day of February then next coming, and there with the Prelates, Nobles and Peers of his said Kingdom to have Discourse and Treaty, the said Lord the now King commanded the then Sheriff of Buckinghamshire by the said Writ firmly enjoining, that, having made Proclamation in his next said County after the Receipt of the same Writ to be holden, of the Day and Place aforesaid, two Knights girded with Swords, the most fitting and discreet of the County aforesaid, and of every City of that County, two Citizens, and of every Borough, two Burgeses of the more discreet and most sufficient, should be freely and indifferently chosen by those, whom such Proclamation should concern according to the Form of the Statute thereupon made and provided, and the Names of the same Knights, Citizens and Burgeses so to be chosen, to be inserted in certain Indentures thereof to be made between him the then Sheriff and those who should be concerned at such Election (although such Persons to be chosen should be present or absent), and should cause them to come at the said Day and Place, so that they the said Knights, Citizens and Burgeses might severally have full and sufficient Power for themselves and the Commonalty of the County, Cities and Boroughs aforesaid,

Court

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foresaid, to do and consent to those Things which should then happen to be ordained there of the Common Council of the said Realm of him the said Lord the now King (by God's Assistance) upon the Busineses aforesaid, so that for want of such Power, or because of an improvident Election of the Knights, Citizens and Burgeses aforesaid the said Busineses might not in any wise remain undone, and should certify without Delay that Election made in the full County of him the then Sheriff distinctly and openly under his Seal and the Seals of those who should be concerned at that Election, to the said Lord the now King in his Chancery at the said Day and Place, sending to him the said Lord the King the Counterpart of the Indenture aforesaid sewed to the same Writ together with that Writ; which said Writ afterwards and before the sixth Day of *February* in the Writ aforesaid mentioned, to wit, on the 29th Day of *December* in the 12th Year aforesaid at the Borough of *Aylesbury* in the said County of *Bucks* was delivered to one *Robert Weedon* Esq; then Sheriff of the same County of *Bucks*, to be executed in Form of Law; by Virtue of which said Writ the aforesaid *Robert Weedon* being then and there Sheriff of the County of *Bucks* aforesaid as before is set forth, afterwards and before the aforesaid 6th Day of *February*, to wit, on the 30th Day of *December* in the 12th Year aforesaid at the Borough of *Aylesbury* aforesaid in the said County of *Bucks* made his certain Precept in Writing under the Seal of him the said *Robert Weedon* of his Office of Sheriff of the County of *Bucks* aforesaid, directed to the Constables of the Borough of *Aylesbury* aforesaid, reciting the Day and Place of the Parliament aforesaid to be holden, thereby requiring them and giving to them in Command, that having made Proclamation within the Borough aforesaid of the Day and Place in the same Precept recited, they should cause to be freely and indifferently chosen two Burgeses of that Borough of the more discreet and most sufficient, by those whom such Proclamation should concern according to the Form of the Statutes in such Cases made and provided, and the Names of the said Burgeses so elected (although they should be present or absent) to be inserted in certain Indentures between the said Sheriff and those who should have Interest in such Election, and that he should cause them to come at the Day and Place in the same Precept recited, so that the said Burgeses might have full and sufficient Power for themselves and the Commonalty of the Borough aforesaid

to

to do and consent to those Things which should then happen to be ordained there of the Common Council of the said Realm (by God's Assistance) upon the Businesses aforesaid, so that for want of such Power, or because of an improvident Election of the Burgeses aforesaid the said Businesses might not remain undone, and that they should without Delay certify the Election to him the said then Sheriff, sending to the same Sheriff the Counterpart of the Indenture aforesaid annexed to the said Precept, that he the said Sheriff might certify the same to the said Lord the King in his Chancery at the Day and Place aforesaid; which said Precept afterwards and before the said 6th Day of *February*, to wit, on the same 30th Day of *December* in the Year aforesaid at the Borough of *Aylesbury* aforesaid in the said County of *Bucks* was delivered to them the said *William White, Richard Talbois, William Bell* and *Richard Heydon* then, and until and after the Return of the same Writ being Constables of the Borough of *Aylesbury* aforesaid, to be executed in Form of Law; to which said *William White, Richard Talbois, William Bell* and *Richard Heydon*, by reason of their Office of Constables of the Borough aforesaid the Execution of that Precept of Right did then and there belong: By Virtue of which said Precept, and by Force of the Writ aforesaid, they the said Burgeses of the Borough of *Aylesbury*, being in that Behalf duly forewarned, afterwards and before the sixth Day of *February*, to wit, on the 6th Day of *January* in the 12th Year aforesaid, at the Borough of *Aylesbury* aforesaid, before them the said *William White, Richard Talbois, William Bell* and *Richard Heydon*, the Constables aforesaid, were assembled to elect two Burgeses for the Borough according to the Exigency of the Writ and Precept aforesaid, and during that Assembly to that Intention, and before such two Burgeses, by Virtue of the Writ and Precept aforesaid, were elected, to wit, on the Day and Year last aforesaid at the Borough of *Aylesbury* aforesaid in the County aforesaid, he the said *Matthias Ashby* then and there being a Burges and an Inhabitant of the Borough aforesaid, and not receiving Alms there or any where else then or before, but being duly qualified and intitled to give his Vote for the choosing of two Burgeses for the Borough aforesaid according to the Exigency of the Writ and Precept aforesaid, before them the said *William White, Richard Talbois, William Bell* and *Richard Heydon*, the four Constables of that Borough, to whom then and there it did duly belong to take and allow the Vote of him the said *Matthias Ashby* of

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of and in the Premises, was ready and offered to give his Vote for choosing *Thomas Lee*, Bart. and *Simon Mayne* Esq; two Burgesses for that Parliament, by Virtue and according to the Exigency of the Writ and Precept aforesaid; and the Vote of him the said *Matthias* then and there of Right ought to have been admitted, and the aforesaid *William White*, *Richard Talbois*, *William Bell* and *Richard Heydon*, so being then and there Constables of the Borough aforesaid, were then and there requested to receive and allow the Vote of him the said *Matthias Asbby* in the Premises: Nevertheless they the said *William White*, *Richard Talbois*, *William Bell* and *Richard Heydon*, being then and there Constables of the Borough aforesaid, well knowing the Premises, but contriving and fraudulently and maliciously intending to damnify him the said *Matthias Asbby* in this Behalf, and wholly to hinder and disappoint him of his Privilege of and in the Premises, did then and there hinder him the said *Matthias Asbby* to give his Vote in that Behalf, and did then and there absolutely refuse to permit him the said *Matthias Asbby* to give his Vote for choosing two Burgesses for that Borough to the Parliament aforesaid, and did not receive, nor did they allow the Vote of him the said *Matthias Asbby* for that Election: And two Burgesses of that Borough were elected for the Parliament aforesaid (he the said *Matthias Asbby* being excluded as before is set forth) without any Vote of him the said *Matthias Asbby*, then and there by Virtue of the Writ and Precept aforesaid, to the Enervation of the aforesaid Privilege of him the said *Matthias Asbby* of and in the Premises aforesaid: Whereupon the said *Matthias Asbby* saith that he is injured, and hath sustained Damage to the Value of 200*l.* and thereupon he brings Suit, &c. Not Guilty. Verdict for the Plaintiff.

N. Judgment was arrested in *B. R.* by 3 Judges against *Holt*. But on the 14th of *January* 1703, this Judgment was reversed in the House of Lords, and Judgment given for the Plaintiff by 50 Lords against 16.

Pleas before our Lady the Queen at Westminster of the Term of the Holy Trinity in the third Year of the Reign of the Lady Ann now Queen of England, &c. Roll 211.

Tenant against Gouldwin. 2 *Ld. Raym.* 1089.

Middlesex, (to wit) **B**E it remembered that heretofore, to wit, in the Term of *Easter* last past before the Lady the Queen at *Westminster* came
Robert

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Robert Tenant by *John Rice* his Attorney, and brought into the Court of the said Lady the Queen then there his certain Bill against *Luke Gouldwin* in the Custody of the Marshal &c. of a Plea of Trespass upon the Case; and there are Pledges of pro ecuting, to wit, *John Doe* and *Richard Roe*, which said Bill follows in these Words, to wit, *Robert Tenant* complains of *Luke Gouldwin*, being in the Custody of the Marshal of the *Marshalsea* of our Lady the Queen before the Queen herself, for that, to wit, That whereas he the said *Robert* on the first Day of *October* in the first Year of the Reign of the Lady *Ann* now Queen of *England*, &c. and from thenceforth always until this Time was possessed and as yet is possessed of one Messuage situate, lying and being in *Fritb-street* in the Parish of *Saint Ann* within the Liberty of *Westminster* in the County of *Middlesex*, for a certain Term of Years not yet ended, and used to place and keep in his Cellar Parcel of his Messuage aforesaid, Stores of Coals and Ale for the Use of his Family, and also to be sold and merchandized to divers Persons who used to buy of him the Commodities aforesaid in his Messuage aforesaid, to the great Profit and Advantage of him the said *Robert*, which said Cellar lies contiguously and for all the Time aforesaid did lie contiguously to a Messuage of the aforesaid *Luke* in the Parish aforesaid, and used to be separated and fenced from a Privy-house of Office, Parcel of the said Messuage of the aforesaid *Luke*, by a thick and close Wall which belongs to the said Messuage of the aforesaid *Luke*, and of Right ought to have been repaired by the aforesaid *Luke* for all the Time aforesaid: Nevertheless the aforesaid *Luke* well knowing the Premisses, but contriving and fraudulently intending unjustly to aggrieve him the said *Robert* in this Behalf, and wholly to deprive him the said *Robert* of the Use and Advantage of the Cellar of his Messuage aforesaid, and to hinder him of the Profit of his Commerce aforesaid, on the same first Day of *October* in the abovesaid Year of the Reign of the said Lady the Queen, and from thenceforth always until this Time so negligently kept and repaired the Wall aforesaid (although often requested to repair the same, to wit, by him the said *Robert* on the same first Day of *October* in the Parish aforesaid) that for want of due Care and Reparation of the same Wall the Filthinesses and nasty Things of the said Privy-house of Office flowed out of the said Privy-house of Office by the decayed Parts and Breaches of the Wall aforesaid into

Special Acti-
on on the
Case for not
repairing a
Partition-
Wall, where-
by the Plain-
tiff was inju-
red.

Averment of
the Usage for
Defendant to
repair.

Breach:

Z

the

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Plaintiff damaged.

the Cellar aforesaid of him the said *Robert*, and overflowed the same Cellar, to wit, in the Parish aforesaid for the whole Time aforesaid, by which he the said *Robert* lost the Use of his Cellar and the Profit of his Commerce aforesaid for all the Time aforesaid; whereupon the said *Robert* saith that he is injured, and hath sustained Damages to the Value of 100*l.* and thereupon he brings Suit, &c.

The Defendant let Judgment go by Default, and a Writ of Inquiry of Damages was awarded, and Damages assessed to 6*l.* And it was moved in Arrest of Judgment. See the Report.

The Queen against Mackarty and Fordenbourgh. 2 Ld. Raym. 1179.

An Indictment against the Defendants.

FOR that they being greedy of dishonest Gain, and wickedly, falsely, deceitfully and maliciously intending to defraud *Thomas Chowne* of *London* Haberdasher, of divers his Goods and Merchandizes, (such a Day, Year and Place) together deceitfully bargained with the aforesaid *T. C.* to barter, sell and exchange a certain Quantity of pretended Wine as good and true new Wine of the Kingdom of *Portugal*, called *New Lisbon* Wine, of him the said *A. F.* for a certain Quantity of Hats of him the said *T. C.* to the Value of 118*l.* of good and lawful Money of *England*: And upon the Bartering, Sale and Exchange aforesaid, he the said *A. F.* took upon himself to be a Merchant of *London*, and to trade and merchandize as a Merchant in Wines of the Kingdom of *Portugal*, and then and there personated a Merchant of *London* as if he had been a true Merchant of *London*, when in Fact he the aforesaid *A. F.* never was a Merchant of *London*, nor did trade or merchandize as a Merchant in Wines of the Kingdom of *Portugal*, or in any Wine whatsoever as a Merchant; and upon the Bartering, Sale and Exchange aforesaid, he the aforesaid *M. M.* took upon himself to be a Broker of *London*, and did then and there personate a Broker of *London* as if he was a true Broker of *London*, when in Fact he the aforesaid *M. M.* at the Time of the Bartering, Sale and Bargaining aforesaid, or at any Time afterwards was not a Broker of *London*; and the aforesaid *T. C.* giving Credit to the said fictitious Assumptions, Personating

atings and Deceits, did then and there barter, sell and exchange to the aforesaid *A. F.* and did deliver to him the said *M. M.* as the Broker between the aforesaid *T. C.* and *A. F.* for the Use of him the said *A. F.* a certain Quantity of Hats of the Value of 118*l.* for ——— Hogsheads of the pretended Wine aforesaid: And that the aforesaid *M. M.* and *A. F.* upon the Bartering, Bargaining and Sale aforesaid, did affirm that the aforesaid pretended Wine was true New Wine of the Kingdom of *Portugal*, called *New Lisbon Wines*, and was the Wine of the aforesaid *A. F.* when in Fact the aforesaid pretended Wine was not Wine of the Kingdom of *Portugal*, nor was it drinkable or wholesome, nor was it the Wine of the aforesaid *A. F.* to the great Deceit and Damage of him the said *T. C.* and in Contempt of the said Lady the now Queen and of her Laws, and against the Peace of the said Lady the now Queen, her Crown and Dignity, &c.

Defendants were found Guilty on this Indictment, and after Motion in Arrest, the Judgment was for the Queen, for there is enough set out to shew the Defendants were Cheats *per Cur*’.

Crowther against Oldfield. 2 *Ld. Raym.* 1225.

This was a Writ of Error in the Common Pleas in an Action upon the Case, wherein the Plaintiff declared in this Manner, viz.

THAT whereas he (the Plaintiff) on the first Day of May, &c. was seised, and as yet is seised of and in one Messuage and ten Acres of Land with the Appurtenances in *N. Parcel* of the Manor of *W.* and holden by Copy of Court-Roll of that Manor as a Customary Tenant of the same in Fee-simple according to the Custom of the same Manor; and also whereas he the said Plaintiff hath, and ought to have, and he and all the Customary Tenants of his said Tenements with the Appurtenances by the Custom within the Manor aforesaid, from Time whereof the Memory of Man is not to the contrary used and approved, have had, and have been accustomed to have Common of Pasture in a certain Place, Pasture or Moor called *Warmlees*, Parcel also of the same Manor, and containing 40 Acres in *Northwroine*, for all his Commonable Cattle levant and couchant upon his Customary Tenements aforesaid, every Year, at all Times of the Year at his Will and Pleasure, as belonging and appertaining to the

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same Tenements with the Appurtenances: Nevertheless the aforesaid Defendant intending to deprive the Plaintiff, &c. inclosed the Common, by which the Plaintiff could not use and enjoy his said Common in so ample and beneficial a Manner as before he had used and enjoyed the same, to the Plaintiff's Damage, &c.

Not Guilty, and a Verdict for the Plaintiff; and the Common Pleas, upon a Motion in Arrest of Judgment, gave Judgment for the Defendant.

But the King's Bench reversed that Judgment after great Deliberation, the Fault in the Declaration being helped by the Verdict.

N. It should have been laid in the Declaration, "That the Tenements were held at the Will of the Lord according to the Custom of the Manor," and then it would have clearly been shewn that they were Copyhold.

Pleas before the Lord the King at Westminster of the Term of Saint Hilary in the 6th Year of the Reign of the Lord William the Third King of England, &c. Roll 309.

Lampton against Collingwood. 1 Ld. Raym. 27.

Writ of Audita
tâ Querela.

Judgment was
recovered
against two
Persons,

England, (to wit) **T**HE Lord the King hath sent to his Justices assigned to hold Pleas before the King himself his Writ close in these Words (to wit) *William the Third by the Grace of God of England, Scotland, France and Ireland King, Defender of the Faith, &c.* To our Justices assigned to hold Pleas before us greeting: We have received Information from the grievous Complaint of *Ann Lampton* Widow, Administratrix of the Goods and Chattels which were of *Robert Lampton* Esq. deceased, That whereas one *Luke Collingwood* lately, that is to say, in the Term of *Easter* in the 34th Year of the Reign of the Lord *Charles the Second* late King of England, &c. in the Court of the same late King before the said late King himself at *Westminster* in the County of *Middlesex*, by the Judgment of the same Court had recovered against the aforesaid *Robert Lampton* and one *Edmund Craister* Esq; by the Names of *Edmund Craister* of *Craister* in the County of *Northumberland*, Esq; otherwise called *Edmund Craister* of *Craister* in the County aforesaid Esq. and of *Robert Lampton* of *Newham* in the County of *Northumberland* Esq; otherwise called *Robert Lampton* of *Newham*

ham in the County aforesaid Gent. four hundred Pounds of Debt, and also forty Shillings which to him the said *Luke* in the same Court were adjudged for his Damages which he sustained as well by occasion of the Detention of that Debt as for his Costs and Charges by him laid out about his Suit in that Behalf, whereof they were convicted, as by the Record and Process thereof in our Court before us at *Westminster* aforesaid remaining more fully appears: And afterwards the aforesaid *Robert* in the Life-time of the aforesaid *Edmund*, that is to say, on the first Day of *November* in the first Year of the Reign of the Lord *James* the Second late King of *England* died, and he the said *Edmund* survived him the said *Robert*, to wit, at *Morpeth* in the County of *Northumberland*, by which, by the Law of *England*, the Goods and Chattels which were of the aforesaid *Robert* at the Time of his Death, being in the Hands of whatsoever Administrator or Administratrix of those Goods and Chattels to be administred, became absolutely discharged of the Debt and Damages aforesaid, as she the said *Ann* is ready to prove by such Ways and Means as are fit [convenient]: Nevertheless the aforesaid *Luke* contriving and intending her the said *Ann* by Pretext of the Judgment aforesaid unjustly to aggrieve, and greatly to damnify, heretofore, after the Death of him the said *Robert*, that is to say, in the Term of the Holy *Trinity* in the fifth Year of our Reign and of the Lady *Mary* late Queen of *England*, &c. prosecuted out of the aforesaid Court before us and the Lady *Mary* our late Queen at *Westminster* our certain Writ (and of our said late Queen *Mary*) of *Scire facias* of and upon the Judgment aforesaid against the aforesaid *Ann*, Administratrix of the Goods and Chattels aforesaid of the aforesaid *Robert*, directed to the then Sheriffs of *London*, by which said Writ reciting, That whereas the aforesaid *Luke* lately in the Court of the said late King *Charles* the Second, before himself the said late King at *Westminster* by Bill without the Writ of the said late King, and by the Judgment of the same Court, had recovered against the aforesaid *Edmund Craister*, otherwise called *Edmund Craister* of *Craister* in the County aforesaid Esq; and the aforesaid *Robert Lampton*, otherwise called *Robert Lampton* of *Newham* in the County aforesaid Gent. the aforesaid 400 *l.* of Debt, and also the aforesaid 40 *s.* for his Damages which he sustained as well by occasion of the Detention of that Debt as for his Costs and Charges by him laid out about his Suit in that Behalf whereof they were then convicted, as it appeared of Re-

cord; one of them dies, and the other survives.

Scire facias sued out against the Administratrix of the Deceased.

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cord; reciting also and suggesting that the aforesaid *Edmund* on the 2d Day of *July* in the 4th Year of the Reign of the Lord *James* the Second late King of *England*, &c. at *London* in the Parish of the Blessed *Mary of the Archer* in the Ward of *Cheaps* died, and that the aforesaid *Robert* survived him, and that afterwards the aforesaid *Robert* on the first Day of *April* in the second Year of our Reign and of our said late Queen at *London* aforesaid in the Parish and Ward aforesaid died intestate, and that, after his Death, Administration of all and singular the Goods and Chattels, Rights and Credits which were of the aforesaid *Robert* at the Time of his Death was committed to the aforesaid *Ann Lampton*, (the Debt and Damages aforesaid not being satisfied to the aforesaid *Luke*) and that the aforesaid *Luke* had besought us and our said late Queen of a fitting Remedy in that Behalf to be provided for him, we and our said late Queen willing what was just in that Behalf to be done, by the same Writ commanded the said Sheriffs of *London*, that by honest and lawful Men of their Bailiwick they should give Notice to the aforesaid *Ann* that she should be before us and our said late Queen at *Westminster* aforesaid on *Tuesday* next after fifteen Days of the Holy *Trinity* then next following, to shew if any Thing she had or knew to say for herself why the aforesaid *Luke* ought not to have his Execution of the Debt and Damages aforesaid of the Goods and Chattels which were of the aforesaid *Robert* at the Time of his Death in the Hands of her the said *Ann* to be administred, if it should seem expedient to him, and further to do and receive that which the aforesaid Court before us and our said late Queen should then and there consider thereof in that Behalf; and that they should have then there the Names of those Persons by whom they should give Notice to her and that Writ, &c. At which Day in the same Court before us and our said late Queen at *Westminster* came the aforesaid *Luke* in his proper Person, and the Sheriffs of *London* aforesaid, to wit, *Thomas Lane* Knt. and *Thomas Cooke* Knt. then returned to us and our aforesaid late Queen upon the Writ aforesaid that the aforesaid *Ann* had nothing in their Bailiwick, where or by which they could give her Notice, neither was she found in the same; and the said *Ann* did not come, therefore as before, by the same Court it was then commanded to the same Sheriffs of *London*, that by honest and lawful Men of their Bailiwick they should give Notice to the aforesaid *Ann* that she should be before us and our said late Queen at *Westminster* on *Tuesday* next after three Weeks

The Sheriffs
return *Nichil*.

*Alias Scire
facias* is a-
warded.

Weeks of the Holy *Trinity* then next following to shew in form aforesaid, if, &c. and further, &c. The same Day was given by the same Court then before us and our said late Queen to the aforesaid *Luke* there, &c. At which Day in the aforesaid Court before us and our said late Queen came the aforesaid *Luke* in his proper Person, and the Sheriffs of *London* aforesaid as before returned that the aforesaid *Ann* had nothing in their Bailiwick, where or by which they could give Notice to her, neither was she found in the same; and the aforesaid *Ann*, although at that Day being solemnly required, did not come, but made Default; therefore it was then and there considered by the same Court before us and the aforesaid late Queen that the aforesaid *Luke* should have Execution of the Debt and Damages aforesaid of the Goods and Chattels which were of the aforesaid *Robert* at the Time of his Death in the Hands of her the said *Ann* to be administred, as by the Record and Process thereof in our Court before us at *Westminster* aforesaid remaining more fully appears; and he the said *Luke* purposes and threatens to sue out Execution against her the said *Ann* of the Debt and Damages aforesaid to be levied of the Goods and Chattels aforesaid, although she the said *Ann* was never summoned in the aforesaid Plea of *Scire facias*, to shew Cause why the said *Luke* ought not to have such Execution against her, neither did she appear at that Plea, also although she the said *Ann* and those Goods and Chattels for the Cause aforesaid ought of Right to be discharged thereof, to the grievous Damage and Hardship of her the said *Ann*, and against the Law and Custom of our Kingdom of *England*; whereupon she the said *Ann* hath besought us of a fitting Remedy to be provided for her by us in this Behalf: We being unwilling that the said *Ann* be in any wise injured, and willing that which is just to be done in this Behalf, do command you that having heard the Complaint of the aforesaid *Ann*, and having called before you the Parties aforesaid, and others whom you shall see fit to be called in this Behalf, and having from thence heard their Reasons thereupon, you cause to be done to the Parties aforesaid full and speedy Justice, as of Right and according to the Law and Custom of our Realm of *England* shall be meet to be done. Witness ourself at *Westminster* the 23d Day of *January* in the 6th Year of our Reign.

The Sheriffs return a 2d *Nichil.*

Execution adjudged upon the *Scire facias* by Default,

although the Administratrix was never summoned to shew Cause, nor did appear.

The Plaintiff's *Gravamen.*

Auditâ Querele.

Plumptre.

Afterwards, to wit, on *Wednesday* next after fifteen Days The Declaration upon the Saint *Hilary* in this same Term before the Lord the King Writ.

PLEADINGS TO THE CASES.

Recovery of
the Judgment
in the King's
Bench.

One of the
Defendants in
the Judgment
dies.

King at *Westminster* cometh the aforesaid *Ann Lampton* by *Nicholas Harding* her Attorney, and immediately saith that the aforesaid *Luke* ought not to have Execution against her the said *Ann* of the Debt and Damages aforesaid to be levied of the Goods and Chattels which were of the aforesaid *Robert Lampton* at the Time of his Death in the Hands of her the said *Ann*, because she saith that the aforesaid *Luke Collingwood* lately, that is to say, in the Term of *Easter* in the 34th Year of the Reign of the said late King *Charles* the Second aforesaid, in the Court of the said late King before the said late King himself at *Westminster* in the County of *Middlesex* aforesaid, by the Judgment of the same Court had recovered against the aforesaid *Robert Lampton* and the aforesaid *Edmund Craisler*, by the Names of, &c. [as in the Writ-part above] the aforesaid 400 l. of Debt and also 40 s. which to him the said *Luke* in the same Court were adjudged for his Damages which he sustained as well by occasion of the Detention of that Debt as for his Costs and Charges by him laid out about his Suit in that Behalf whereof they were convicted, as by the Record and Process thereof in the Court of the said Lord the now King before the King himself at *Westminster* aforesaid remaining more fully appears. And she the said *Ann* further saith that afterwards the aforesaid *Robert* in the Life-time of the aforesaid *Edmund*, that is to say, on the first Day of *November* in the first Year of the Reign of the said late King *James* the Second aforesaid died, and he the said *Edmund* survived him the said *Robert*, to wit at *Morpeth* aforesaid in the County of *Northumberland* aforesaid, by which by the Law of *England* the Goods and Chattels which were of the aforesaid *Robert* at the Time of his Death, being in the Hands of whatsoever Administrator or Administratrix of those Goods and Chattels to be administered, became absolutely discharged of the Debt and Damages aforesaid, as she the said *Ann* is ready to prove by such Ways and Means as are fit [convenient]. Nevertheless the aforesaid *Luke* contriving and intending her the said *Ann*, by Pretext of the Judgment aforesaid unjustly to aggrieve and greatly to damnify, heretofore, after the Death of him the aforesaid *Robert*, that is to say, in the Term of the Holy *Trinity* in the fifth Year of the Reign of the Lord *William* now King of *England*, &c. and of the Lady *Mary* late Queen of *England*, &c. procured out of the aforesaid Court then before the said Lord the now King and the said late Queen *Mary* at *Westminster* aforesaid

aforesaid, a Writ of the said Lord the now King and of the said late Queen of *Scire facias* of and upon the Judgment aforesaid against the aforesaid *Ann* Administratrix of the Goods and Chattels of the aforesaid *Robert*, directed to the then Sheriffs of *London*, by which said Writ reciting That whereas the aforesaid *Luke* lately in the Court of the said late King *Charles* the Second before himself the said late King at *Westminster*, by Bill without the Writ of the said late King and by the Judgment of the same Court, had recovered against the aforesaid *Edmund Craister*, otherwise called *Edmund Craister* of *Craister* in the County aforesaid Esq; and the aforesaid *Robert Lampton*, otherwise called *Robert Lampton* of *Newham* in the County aforesaid Gent. the aforesaid 400 *l.* of Debt, and also the aforesaid 40 *s.* for his Damages which he sustained as well by occasion of the Detention of that Debt as for his Costs and Charges by him laid out about his Suit in that Behalf whereof they were then convicted, as it appeared of Record; reciting also and suggesting that the aforesaid *Edmund* on the 2d Day of *July* in the 4th Year of the Reign of the Lord *James* the Second late King of *England*, &c. abovesaid at *London* aforesaid in the Parish of the Blessed *Mary of the Arches* in the Ward of *Cheape* died, and that the aforesaid *Robert* survived him the said *Edmund*, and that afterwards on the first Day of *April* in the second Year of the Reign of the said Lord *William* the now King and of the Lady *Mary* late Queen of *England* abovesaid at *London* aforesaid in the Parish and Ward aforesaid he died intestate, and that, after his Death, Administration of all and singular the Goods and Chattels, Rights and Credits which were of the aforesaid *Robert* at the Time of his Death was committed to the aforesaid *Ann Lampton*, (the Debt and Damages aforesaid not being satisfied to the aforesaid *Luke*) and that the aforesaid *Luke* had besought the aforesaid Lord *William* the now King and the Lady *Mary* late Queen of *England*, of a fitting Remedy in that Behalf to be provided for him, and that the said Lord the now King and the said late Queen willing what was just in that Behalf to be done, by the same Writ commanded the said Sheriffs of *London*, that by honest and lawful Men of their Bailiwick they should give Notice to the aforesaid *Ann* that she should be before the said Lord the now King and the said late Queen at *Westminster* aforesaid on *Tuesday* next after fifteen Days of the Holy *Trinity* then next following, to shew if any Thing she had or knew to say for herself why the aforesaid *Luke* ought not to have his Execution

Scire facias
sued out against the Administratrix of the Deceased.

PLEADINGS TO THE CASES.

Execution of the Debt and Damages aforesaid of the Goods and Chattels which were of the aforesaid *Robert* at the Time of his Death in the Hands of her the said *Ann* to be administred, if it should seem expedient to him, and further to do and receive that which the aforesaid Court before the said Lord the now King and the said late Queen should then and there consider thereof in that Behalf; and that they should have then there the Names of those Persons by whom they should give Notice to her and that Writ, &c. At which Day in the same Court before the said Lord the now King and the said late Queen at *Westminster* came the aforesaid *Luke* in his proper Person, and the Sheriffs of *London* aforesaid, to wit, *Thomas Lane*, Knt. and *Thomas Cooke*, Knt. then returned to the said Lord the now King and to the said late Queen upon that Writ that the aforesaid *Ann* had nothing in their Bailiwick, where or by which they could give her Notice, neither was she found in the same, and that the said *Ann* did not come, therefore as before, by the same Court it was then commanded to the same Sheriffs of *London*, that by honest and lawful Men of their Bailiwick they should give Notice to the aforesaid *Ann* that she should be before the said Lord the now King and the said late Queen at *Westminster* on *Tuesday* next after three Weeks of the Holy *Trinity* then next following to shew in Form aforesaid, if, &c. The same Day was given by the same Court then before the said Lord the now King and the said late Queen to the aforesaid *Luke* there, &c. At which Day in the aforesaid Court before the said Lord the now King and the said late Queen at *Westminster* came the aforesaid *Luke* in his proper Person, and the Sheriffs of *London* aforesaid as before returned that the aforesaid *Ann* had nothing in their Bailiwick, where or by which they could give Notice to her, neither was she found in the same; and the aforesaid *Ann*, although at that Day being solemnly required, did not come, but made Default; therefore it was then and there considered by the same Court before the said Lord the now King and the said late Queen that the aforesaid *Luke* should have Execution of the Debt and Damages aforesaid of the Goods and Chattels which were of the aforesaid *Robert* at the Time of his Death in the Hands of her the said *Ann* to be administred, as by the Record and Process thereof in the Court of the aforesaid Lord the now King before the King himself at *Westminster* remaining more fully appears; and he the said *Luke* purposes and threatens to sue out Execution against her the said *Ann* of the Debt and Damages aforesaid.

said to be levied of the Goods and Chattels aforesaid, al- though she the said *Ann* was never summoned in the afore- said Plea of *Scire facias*, to shew Cause why the said *Luke* ought not to have such Execution against her, neither did she appear in that Plea, also although she the said *Ann* and those Goods and Chattels for the Cause aforesaid ought of Right to be discharged thereof, to the grievous Damage and Hardship of her the said *Ann*, and against the Law and Custom of this Kingdom of *England*; and this she is ready to verify: Whereupon she prays Judgment, and that the aforesaid *Luke* may be barred from having every Execution whatsoever of and upon the Recovery aforesaid to be levied of the Goods and Chattels which were of the aforesaid *Robert* at the Time of his Death, and that she the said *Ann* may be restored to all Things which she hath lost by occasion of the Adjudication of Execution aforesaid &c. and that the aforesaid *Luke* may come here in Court to answer of and concerning the Premisses &c. But because the Court of the Lord the King now here before the King himself doth not know whether the Allegations of the aforesaid *Ann* in this Behalf are true or not, therefore the Sheriff of *Northumberland* is commanded that he cause the aforesaid *Luke* to come before the Lord the King from the Day of *Easter* in 15 Days wheresoever &c. to answer of and concerning the Premisses, and further to do and receive that which the Court of the said Lord the King now here before the King himself shall consider in this Behalf. The same Day is given to the aforesaid *Ann* &c. at which Day before the Lord the King at *Westminster* cometh the aforesaid *Ann* by her Attorney aforesaid, and the aforesaid *Luke* at the same Day, being solemnly required, likewise cometh by *Henry Dodd* his Attorney, and saith that the Matter in the Writ and Declaration aforesaid contained is not sufficient in Law to compel the aforesaid *Luke* to answer to the same, or to retard the having his Execution of and upon the Judgment aforesaid to be levied of the Goods and Chattels which were of the aforesaid *Robert Lampton* at the Time of his Death, to which he the said *Luke* hath no Necessity, nor is he bound by the Law of the Land in any Manner to answer; and this he is ready to verify: Wherefore for want of a sufficient Writ and Declaration in this Behalf, he the said *Luke* prays Judgment of the said Writ and Declaration, and that the said Writ and Declaration may be quashed, &c.

Cres. Levinz.

And

The Plaintiff was never summoned.

Gravamen.

Plaintiff prays Judgment,

and Restitution.

Venire awarded to summon the Plaintiff in the *Scire facias*.

who appears and demurs.

PLEADINGS TO THE CASES.

*Curia ad-
visare vult.*Judgment for
the Plaintiff,and Restitu-
tion awarded.

And the aforesaid *Ann* saith that the Writ and Declaration aforesaid ought not to be quashed, because she saith that the said Writ and Declaration and the Matters in them contained are good and sufficient in Law to bar the aforesaid *Luke* from having his Execution of and upon the Judgment aforesaid against her the said *Ann* to be levied of the Goods and Chattels which were of the aforesaid *Robert* at the Time of his Death, which said Writ and Declaration and the Matters in them contained she the said *Ann* is ready to verify and prove as the Court &c. And because the aforesaid *Luke* doth not answer to the Declaration aforesaid, nor hath hitherto in any Manner denied it, she the said *Ann*, as before, prays Judgment, and that the aforesaid *Luke* may be barred from having every Execution whatsoever of and upon the Recovery aforesaid to be levied of the Goods and Chattels which were of the aforesaid *Robert* at the Time of his Death, &c. and that she may be restored to all Things which she hath lost by occasion of the Adjudication of Execution aforesaid, &c. But because the Court of the Lord the King here is not yet advised of giving their Judgment of and concerning the Premises, Day thereupon is given to the Parties aforesaid before the Lord the King, from the Day of the Holy Trinity in three Weeks, wheresoever &c. for hearing their Judgment of and concerning the Premises, for that the Court of the said Lord the King here thereof are not &c. At which Day before the Lord the King at *Westminster* the Parties aforesaid come by their Attornies aforesaid, whereupon all and singular the Premises being seen and fully understood by the Court of the Lord the King now here, and mature Deliberation being had thereupon, for that because it seems to the Court of the said Lord the King now here that the Writ and Declaration aforesaid and the Matter in them contained are good and sufficient in Law to bar the aforesaid *Luke* from having his Execution of and upon the Judgment aforesaid against the aforesaid *Ann*, to be levied of the Goods and Chattels which were of the aforesaid *Robert* at the Time of his Death, therefore it is considered that the aforesaid *Luke* is barred from having every Execution whatsoever of and upon the Recovery aforesaid to be levied of the Goods and Chattels which were of the aforesaid *Robert* at the Time of his Death &c. and that she the said *Ann* is restored to all Things which she hath lost by occasion of the Adjudication of Execution aforesaid &c.

Trinity

Trinity Term, 9 W. 3. Roll 493.

Bellasis one &c. against Hester. 1 Ld. Raym. 280.

Cooke.

Surrey, (to wit) **J**OHN Hester was attached by the Lord Attachment
the King's Writ of Privilege issuing of Privilege
out of the Court here to answer to *Richard Bellasis* one of for a Clerk of
the Clerks of *John Cooke* Esq; Chief Prothonotary of the the Prothono-
Court of the Lord the King of the Bench here, according tary.
to the Liberties and Privileges of the same Court for such
Prothonotaries, their Clerks, and other Ministers of the
same Bench, from Time whereof the Memory of Man is
not to the contrary used and approved in the same, of a
Plea of Trespass upon the Case &c. And whereupon the
said *Richard* in his proper Person complains That whereas First Count
on the first Day of *May* in the Year of our Lord 1697, upon a Bill of
and long before, as well the aforesaid *John Hester*, as one Exchange a-
William Greeveson, were Persons in the way of merchan- gainst the Ac-
dizing, trading and using Commerce within this Realm of ceptor.
England, to wit, at *Southwark* in the said County of *Sur-
ry*, and the aforesaid *William* on the same Day and Year
at *Southwark* aforesaid, according to the Usage of Mer-
chants made his certain Bill of Exchange bearing Date the
same Day and Year, directed to the aforesaid *John Hester*,
and thereby requested him the said *John Hester* in ten Days
after Sight of the same Bill of Exchange to pay to the
aforesaid *Richard*, by the Name of *Richard Bellasis* Esq; or
his Order, the Sum of ten Pounds, (the like Sum receiv-
ed of Master *William Wilkinson*) of which said Bill of Ex-
change the aforesaid *John Hester* afterwards, to wit, on the
7th Day of *May* in the Year of our Lord 1697 abovesaid at
Southwark aforesaid had Notice and Sight, and then and there
accepted the same according to the Usage and Custom of
Merchants, and by reason thereof he the said *John Hester*
became chargeable to pay to him the said *Richard* the
aforesaid ten Pounds in the same Bill of Exchange men-
tioned according to the Tenor and Effect of the same Bill;
and being so chargeable, the aforesaid *John Hester* after-
wards, to wit, the same Day and Year last abovesaid at
Southwark aforesaid, in Consideration thereof assumed up-
on himself, and to him the said *Richard* then and there
faithfully promised that he the said *John Hester* the said ten
Pounds

PLEADINGS TO THE CASES.

Second Count
upon an *Assumpsit* for
Money re-
ceived to the
Plaintiff's Use.

Pounds to the said *Richard*, according to the Tenor and Effect of the same Bill, would well and faithfully pay and content. And also whereas the aforesaid *John* on the same Day and Year last aforesaid was indebted to the said *Richard* in other ten Pounds of lawful Money of *England* for Monies by the aforesaid *John Hester* for the Use of him the said *Richard* before that Time received, and being so indebted, the aforesaid *John Hester* afterward, to wit, the same Day and Year at *Southwark* aforesaid, in Consideration thereof assumed upon himself, and to the said *Richard* then and there faithfully promised that he the aforesaid *John Hester* the same ten Pounds last mentioned to him the said *Richard* would well and faithfully pay and content: Nevertheless the aforesaid *John Hester* not at all regarding his several Promises and Undertakings aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud him the said *Richard* in this Behalf, the aforesaid several Sums of Money or any Part thereof to him the said *Richard* (although to this requested by him the said *Richard* on the 17th Day of *May* in the Year of our Lord 1697 aforesaid and often afterwards at *Southwark*) hath not paid, or in any wise satisfied, but to pay the same to him hath hitherto altogether refused and as yet doth refuse, to the Damage of him the said *Richard* of 20*l.* and thereupon he brings Suit, &c. Pledges of prosecuting *John Doe* and *Richard Roe*.

Plea without
any Defence.

Oyer of the
Writ.

Demands
Judgment of
the Writ and
Declaration
as to the first
Promise.

As to second
Promise *Non*
Assumpsit.

And the aforesaid *John* by *Thomas Wright* his Attorney comes and prays Oyer of the Writ of Attachment aforesaid; and it is read to him in these Words, (to wit) *William* the Third by the Grace of God of *England*, *Scotland*, *France* and *Ireland* King, Defender of the Faith, &c. To the Sheriff of *Surry*, greeting: Attach *John Hester* so that you may have him before our Justices at *Westminster* on *Friday* next after the Morrow of the Holy *Trinity* to answer to *Richard Bellasis* Esq; one of the Clerks of *John Cooke* Esq; Chief Prothonotary of our Court of the Bench, according to the Liberties and Privileges of the same Court for such Prothonotaries, their Clerks and other Ministers of the same Bench, from Time whereof the Memory of Man is not to the contrary, used and approved in the same, of a Plea of *Trespas* upon the Case, and have you there this Writ. Witness *G. Treby* at *Westminster* the 17th Day of *May* in the 9th Year of our Reign; which being read and heard, he the said *John* prays Judgment of the Writ and Declaration aforesaid as to the first Promise in the Declaration aforesaid, because he saith that

it

it manifestly appears by that Declaration that the said Writ was prosecuted before the said *Richard* had any Cause of Action accrued upon that Promise, and this he is ready to verify: Whereupon he prays Judgment of the said Writ and Declaration as to the said first Promise, and that the said Writ and Declaration in that Behalf may be quashed, &c. and as to the other Promise aforesaid in the Declaration aforesaid above mentioned, he the said *John* saith that he did not assume upon himself in Manner and Form as the aforesaid *Richard* above hath declared against him, and of this he puts himself upon the Country.

And the aforesaid *Richard* saith that the said Plea of the aforesaid *John* above in Form aforesaid pleaded in Abatement of the Writ and Declaration of him the said *Richard* as to the first Promise and Undertaking aforesaid, and the Matter in the same contained, are not sufficient in Law to quash the said Writ and Declaration thereupon; and that the said Plea of the aforesaid *John* above pleaded in Bar as to the second Promise and Undertaking aforesaid, and the Matter in the same contained, are not sufficient in Law to bar him the said *Richard* from having his said Action thereupon against him the said *John*; and that he the said *Richard* to those Pleas in Manner and Form aforesaid pleaded hath no Necessity, nor is he bound by the Law of the to answer, and this he is ready to verify: Whereupon for want of sufficient Pleas of him the said *John* in this Behalf, he the said *Richard* prays Judgment and his Damages by reason of the Premises to be adjudged to him &c.

And the aforesaid *John* as to the first Promise aforesaid, since he hath above alledged sufficient Matter in Law to quash the Writ and Declaration aforesaid in that Behalf, which he is ready to verify, which said Matter the aforesaid *Richard* doth not deny, nor hath answered the same in any Manner, but altogether refuses to admit that Averment, as before prays Judgment of the said Writ and Declaration in that Behalf, and that the said Writ and Declaration as to the said first Promise may be quashed; and as to said second Promise, since he the said *John* hath above alledged sufficient Matter in Law to bar him the said *Richard* from having his said Action thereupon to be maintained, which he is ready to verify, which said Matter the said *Richard* doth not deny, nor hath answered to the same in any Manner, prays Judgment, and that the said *Richard* may be barred from his said Action as to the said second Promise,

PLEADINGS TO THE CASES.

Promises, &c. And because the Justices here will advise themselves, &c.

Michaelmas Term 2 William and Mary. Roll 289

Kemp against Andrews. Cited 1 Ld. Raym. 340.

Trover by a
surviving
Merchant.

London (to wit) **B**E it remembred, that on *Thursday* next after three Weeks of Saint *Michael* in this same Term before the Lord the King and Lady the Queen at *Westminster* came *Francis Kemp* Merchant, by *Edward Sbellar* his Attorney, and brought here into the Court of the said Lord the King and Lady the Queen then there his certain Bill against *Jonathan Andrews* Mariner, in Custody of the Marshal, &c. of a Plea of Trespass upon the Case; and there are Pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said Bill follows in these Words, (to wit) *London*, (to wit) *Francis Kemp* Merchant, complains of *Jonathan Andrews* Mariner, being in the Custody of the Marshal of the *Marshalsea* of the Lord the King and Lady the Queen, before the King and Queen themselves, for that, to wit, That whereas the said *Francis* and certain other Persons *Geoffry Nightingale* and *John Denning* now deceased, (whom he the said *Francis* hath survived) in the Life-time of them the said *Geoffry* and *John*, to wit, on the 20th Day of *November* in the Year of our Lord 1686, at *London* aforesaid, to wit, in the Parish of the Blessed *Mary of the Arches* in the Ward of *Cheape*, were possessed of the Goods and Chattels following, that is to say, of one Ship called the *Streights Merchant* (and several other Goods which are particularly specified) to the Value of 20000*l.* of lawful Money of *England*, as of the proper Goods and Chattels of him the said *Francis*, and of the aforesaid *Geoffry* and *John* in the Life-time of them the said *Geoffry* and *John*, and being so possessed thereof, he the said *Francis* and the aforesaid *Geoffry* and *John* afterwards in the Life-time of them the said *Geoffry* and *John*, to wit, the same Day and Year abovesaid at *London* aforesaid in the Parish and Ward aforesaid casually lost the Goods and Chattels aforesaid out of their Hands and Possession, which said Goods and Chattels afterwards, to wit, the same Day and Year abovesaid, at *London* aforesaid in the Parish and Ward aforesaid came to the Hands and Possession of him the said *Jonathan* by finding: Nevertheless the aforesaid *Jonathan* well knowing the Goods and Chattels aforesaid to be the Goods and Chattels of him the said *Francis*,

Francis, and of the aforesaid *Geoffry* and *John*, and to them the said *Francis*, *Geoffry* and *John* in the Life-time of them the said *Geoffry* and *John* (whom he the said *Francis* hath survived) of Right to belong and appertain, but contriving and fraudulently intending them the said *Francis*, *Geoffry* and *John*, in the Life-time of them the said *Geoffry* and *John* (whom he the said *Francis* hath survived) craftily and subtilly to deceive and defraud, hath not delivered the Goods and Chattels aforesaid (altho' often requested) to the said *Francis* and to the aforesaid *Geoffry* and *John* in the Life-time of the said *Geoffry* and *John*, or to any of them, or to him the said *Francis* after the Death of them the said *Geoffry* and *John*, but afterwards, to wit, the same Day and Year aforesaid at *London* aforesaid in the Parish and Ward aforesaid converted and disposed of the Goods and Chattels aforesaid to the said *Jonathan*'s own proper Use and Benefit, to the Damage of him the said *Francis Kemp* of 30000*l.* and thereupon he brings Suit, &c.

And the aforesaid *Jonathan Andrews* by *Basil Herne* his Defendant Attorney comes and defends the Force and Injury when, pleads they &c. and saith that the aforesaid *Francis Kemp* ought not to were Joint have or maintain his Action aforesaid against him, because Merchants, he saith that the aforesaid *Francis Kemp* and the aforesaid and so there *Geoffry Nightingale* and *John Penning* in the Declaration ought to be aforesaid above named, long before the aforesaid several no Survivorship. Times in which the Possession, Loss, Conversion and Dis-

position of the Goods and Chattels aforesaid in the Declaration aforesaid mentioned are supposed to be had and done, and also at the said several Times in which &c. were Merchants, and as Joint Merchants, for the common Profit of them the said *Francis*, *Geoffry* and *John* were possessed of the aforesaid Goods and Chattels in the Declaration mentioned, to wit, at *London* aforesaid in the Parish and Ward aforesaid, and that by the Law of Merchants, and the Law used and approved within this Realm of *England*, there is not, nor ever was any Right of Survivorship between Joint Merchants. And the aforesaid *Jonathan* further saith that the aforesaid *Geoffry Nightingale* before the exhibiting of the Bill aforesaid, to wit, on the 6th Day of *July* now last past at *London* aforesaid in the Parish and Ward aforesaid made his last Will and Testament in Writing, and then and there constituted and appointed *Ann Nightingale* and *Bridges Nightingale* Executors of his same last Will aforesaid; which said *Bridges Nightingale*, after the Death of him the said *Geoffry Nightingale*, and be-

That one deceased Merchant made a Will and an Executor who proved it, and is living.

PLEADINGS TO THE CASES.

And that the other deceased Merchant made a Will and an Executor who proved it, and is living.

fre the Exhibiting of the Bill aforesaid, to wit, on the first Day of *October* now last past, at *London* aforesaid in the Parish and Ward aforesaid, proved the same last Will of him the said *Geoffry Nightingale* in due Form of Law, and took upon himself the Burthen of the Execution thereof, and as yet is living, and in full Life. And the aforesaid *Jonathan* farther saith that the aforesaid *John Penning*, before the Exhibiting of the Bill aforesaid, to wit, the Day, Year, and at the Place aforesaid made his last Will and Testament in Writing, and then and there constituted and appointed one *Elizabeth Penning* Executrix of his same last Will; which said *Elizabeth* after the Death of him the said *John Penning*, and before the Exhibiting of the Bill aforesaid, to wit, the Day and Year, and at the Place aforesaid proved the same last Will of him the said *John Penning* in due Form of Law, and hath taken upon herself the Burthen of the Execution thereof, and as yet is there living, and in full Life, and this he is ready to verify: Whereupon he prays Judgment if the aforesaid *Francis* ought to have or maintain his Action aforesaid against him, &c.

Tremaine,
W. Thompson,

The Plaintiff demurs, and shews for Cause that the Plea amounts to the General Issue, does not answer the Declaration, is uncertain, double, and wants Form.

The Defendant joins in Demurrer.

Hilary Term in the 8th Year of King William the Third.
Roll 1667.

Case upon mutual Promises upon an Agreement, whereby Plaintiff agreed to release his Equity of Redemption in two Closes, in Consideration of which Defendant promised to pay Plaintiff 7*l*.

Thorpe against Thorpe. 1 *Ld. Raym.* 662.

Yorkshire, (to wit) **R***ICHARD Thorpe* late of *Hopton* in the County aforesaid, Gent. was attached to answer to *John Thorpe* of a Plea of Trespass upon the Case, &c. and whereupon the said *John* by *Henry Hemmingway* his Attorney complains, That whereas the aforesaid *Richard*, on the 19th Day of *January* in the Year of our Lord 1693, had and held of and from the aforesaid *John* two Closes of Customary Land called *Boolefalls* with the Appurtenances in *Hipperholme* in the County aforesaid by way of Mortgage: And also whereas afterwards, to wit, the same Day and Year at the Castle of *York* a certain Discourse was had and moved between the aforesaid *Richard*

and him the said *John*, of and concerning the Mortgage
aforesaid, and the releasing the Equity of Redemption of
him the said *John* of and in the Tenements aforesaid with
the Appurtenances, and also of and concerning certain
Sums of Money which were then owing and payable by
him the said *John* to the aforesaid *Richard*; and upon that
Discourse he the said *John* then and there agreed to make
to the Use of the aforesaid *Richard* and for his sole Benefit,

a good and sufficient Release of the Equity of Redemption
of him the said *John*, of and in the Tenements aforesaid
with the Appurtenances, in Consideration whereof the a-
foresaid *Richard* did then and there agree to give and pay
to him the said *John* seven Pounds over and besides the Mo-
nies which were then due, of and upon the Mortgage a-
foresaid, and to deliver to him the said *John* one Sack of
Malt, and also to acquit him of and from all Sums of Mo-
ney which he the said *John* then owed to the aforesaid *Rich-*
ard, as before is said: And he the said *Richard* afterwards,
to wit, the same Day and Year at the Castle of *York* afore-
said, in Consideration of the Agreement aforesaid, and al-
so in Consideration that the aforesaid *John* had then and
there assumed upon himself, and had faithfully promised to
the aforesaid *Richard* to perform all Things in the Agree-
ment aforesaid contained on the Part of him the said *John*
to be performed, assumed upon himself, and to him the
said *John* then and there faithfully promised that he the
aforesaid *Richard* would well and truly fulfill the Agree-
ment aforesaid in all Things on his Part to be performed.

And the said *John* in Fact saith that he, after the making General
of the Agreement aforesaid, and before the Day of ob- Averment of
taining of the original Writ of him the said *John*, to wit, Performance
on the 29th Day of *July* in the Year of our Lord 1694, of all Things
did perform all Things in that Agreement contained on the on the Plain-
Part of him the said *John* to be performed, to wit, at the tiff's Part.
Castle of *York* aforesaid: And although the aforesaid *Rich-*
ard in Pursuance of the Agreement aforesaid did give and
pay to him the said *John* 25 s. Parcel of the aforesaid 7 l.
Nevertheless the aforesaid *Richard* not at all regarding his
Promise and Undertaking aforesaid in Form aforesaid made,
as to 5 l. and 15 s. the Residue of the aforesaid 7 l. but con-
triving and fraudulently intending craftily and subtilly to
deceive and defraud him the said *John* in this Behalf, hath
not given or paid to him the said *John* the aforesaid 5 l. and
15 s. or any Part thereof, nor hath delivered to him the
said *John* the aforesaid Sack of Malt, nor hath acquitted
him the said *John* of the Monies aforesaid to the afore-

PLEADINGS TO THE CASES.

Second Count
on an *Assump-*
fit for 5*l.* 15*s.*
for a Releate
of his Equity
of Redemp-
tion.

Bar by the
same Release,
by which the
Plaintiff re-
leased his E-
quity of Re-
demption, &c.
as to the first
Count.

said *Richard* owing, as before is said, according to the Form and Effect of the Agreement aforesaid, (although to do this the aforesaid *Richard* afterwards, to wit, on the 10th Day of *August* in the Year of our Lord last aforesaid, and often afterward, at the Castle of *York* aforesaid was requested by him the said *John*), but so to do hath hitherto altogether refused and as yet doth refuse. And also whereas the aforesaid *Richard* afterwards, to wit, on the 29th Day of *September* in the Year of our Lord last aforesaid at the Castle of *York* aforesaid was indebted to him the said *John* in 5*l.* and 15*s.* of lawful Money of *England* for the Release of the Equity of Redemption of him the said *John* of and in certain Customary Lands with the Appurtenances in *Hipperbolme* in the County aforesaid, by him the said *John* to the aforesaid *Richard* and to his Use and Benefit, at the special Instance and Request of him the said *Richard* before granted and made, and being thereupon so indebted, the aforesaid *Richard* afterwards, to wit, the Day and Year last aforesaid, at the Castle of *York* aforesaid, in Consideration thereof assumed upon himself, and to him the said *John* then and there faithfully promised that he the aforesaid *Richard* the aforesaid 5*l.* and 15*s.* last mentioned to him the said *John*, when he should be thereunto afterwards requested, would well and faithfully satisfy. Nevertheless the aforesaid *Richard* not at all regarding his aforesaid Promise and Undertaking last mentioned, but contriving and fraudulently intending craftily and subtilly to deceive and defraud him the said *John* in this Behalf, hath not yet paid, or in any wise satisfied the aforesaid 5*l.* and 15*s.* last mentioned, or any Part thereof, to him the said *John* (although to do this the aforesaid *Richard* afterwards to wit, on the 11th Day of *November* in the Year of our Lord last aforesaid, and often afterwards, at the Castle of *York* aforesaid hath been requested by him the said *John* but hath hitherto altogether refused to pay the same to him, and as yet doth refuse, to the Damage of him the said *John* of 20*l.* and thereupon he brings Suit, &c.

And the aforesaid *Richard* by *Joseph Green* his Attorney comes and defends the Force and Injury when &c. And as to the first Promise aforesaid, he the said *Richard* saith that the aforesaid *John Thorpe* ought not to have his Action aforesaid thereupon against him, because he saith that after the making of that Promise, to wit, on the 29th Day of *July* in the Year of our Lord 1694, at the Castle of *York* aforesaid, by a certain Indenture then and there made between the aforesaid *Richard Thorpe* and one *Thomas Heald*

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of *Yor*
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Duties.

by the Names of *Richard Thorpe* of *Hopton* in the County of *York* Gent. and *Thomas Heald* of *Hipperbolme* in the said County of *York* Gent. of the one Part, and the aforesaid *John* by the Name of *John Thorpe* late of *Sinderbills* in the Township of *Hipperbolme* aforesaid Gent. of the other Part, the Counterpart whereof sealed with the Seal of him the said *John*, he the said *Richard* brings here into Court, bearing Date the Day and Year last aforesaid, the said *John* did remise, release and for ever quit-claim to the said *Richard Thorpe* and *Thomas Heald*, their Executors, Administrators and Assigns, all and all Manner of Actions, Suits, Causes and Accounts, Debts, Duties, Reckonings, Sum and Sums of Money, and Demands whatsoever, which he the said *John Thorpe* ever had, or which he, his Heirs, Executors, Administrators and Assigns, or any of them, in Time then to come could or might have to, for or against the said *Richard Thorpe* and *Thomas Heald*, their Executors, Administrators or Assigns, for or by reason of any Matter, Cause or Thing whatsoever, as by the Indenture aforesaid it is more fully manifest and appeareth, and this he is ready to verify: Whereupon he prays Judgment if the aforesaid *John Thorpe* ought to have his Action aforesaid thereupon against him, &c. And as to the second Promise aforesaid in the Declaration aforesaid above mentioned, he the said *Richard* saith that the aforesaid *John Thorpe* ought not to have his Action aforesaid thereupon against him, because he saith that that Promise was made before the 29th Day of *July* in the Year of our Lord 1694 aforesaid, to wit, on the first Day of *July* in the same Year, to wit, at the Castle of *York* aforesaid. And the said *Richard* further saith that on the aforesaid 29th Day of *July* in the Year of our Lord 1694 aforesaid at the Castle of *York* aforesaid, by the aforesaid Indenture then and there made between the aforesaid *Richard Thorpe* and the aforesaid *Thomas Heald*, by the Names of *Richard Thorpe* of *Hopton* in the County of *York* Gent. and *Thomas Heald* of *Hipperbolme* in the said County of *York* of the one Part, and the aforesaid *John* by the Name of *John Thorpe* late of *Sinderbills* in the Township of *Hipperbolme* aforesaid Gent. of the other Part, (the Counterpart whereof sealed with the Seal of him the said *John* is brought here in Court as before is set forth, bearing Date the Day and Year last aforesaid) the said *John* did remise, release and for ever quit-claim to the said *Richard Thorpe* and *Thomas Heald*, their Executors, Administrators and Assigns, all and all Manner of Actions, Suits, Causes and Accounts, Debts, Duties, Reckonings, Sum and Sums of Money, and De-

A like Plea in
Bar to the 2d
Count.

PLEADINGS TO THE CASES.

Traverses that
the Promise
was before
the Release.

Replication.
Oyer of the
Release.

mands whatsoever, which he the said *John Thorpe* ever had, or which he, his Heirs, Executors, Administrators and Assigns, or any of them, in any Time then to come could or might have to, for or against the said *Richard Thorpe* and *Thomas Heald*, their Executors, Administrators or Assigns, for or by reason of any Matter, Cause or Thing whatsoever, as by the Indenture aforesaid more fully appears, without this, that after the making of the Indenture aforesaid he the said *Richard* assumed upon himself, as by the same Promise is above supposed, and this he is ready to verify. Whereupon he prays Judgment if the aforesaid *John Thorpe* ought to have his Action aforesaid thereupon against him, &c.

And the aforesaid *John* prays Oyer of the Indenture aforesaid, and it is read to him in these Words, (to wit) This Indenture made the 29th Day of *July* in the sixth Year of the Reign of our Sovereign Lord and Lady *William* and *Mary* by the Grace of God of *England*, *Scotland*, *France* and *Ireland* King and Queen, Defenders of the Faith, &c. Annoq. Dom. 1594, between *Richard Thorpe* of *Hopton* in the County of *York* Gent. and *Thomas Heald* of *Hipperholme* in the said County of *York* Gent. of the one Part, and *John Thorpe* late of *Sinderbill* in the Township of *Hipperholme* aforesaid Gent. of the other Part: Where as the said *John Thorpe* hath formerly by certain Deeds Writings and Surrenders conveyed and surrendered by way of Mortgage, and given up with a Straw into the Hand of the Lord of the Manor of *Wakefield*, according to the Custom thereof, two Closes of Land, Meadow and Pasture with the Appurtenances lying and being within the Graveship of *Hipperholme* within the said Manor of *Wakefield*, called and known by the Name of *Boalefalls*, now in the Tenure or Occupation of *J. R.* and *S. A.* or their Assigns, being of the yearly Rent to the Lord of the said Manor of 8*d.* and compounded for the Use and Behoof of *Richard Thorpe* and of his Heirs and Assigns for ever. And whereas likewise the said *John Thorpe* hath also formerly by certain Deeds, Writings and Surrenders conveyed and surrendered by way of Mortgage all that his Capital Messuage or Tenement called or known by the Name of *Sinderbills* with the Appurtenances situate and being in *Hipperholme* aforesaid, and all Houses, Edifices, Barns, Buildings, Stables, Orchards, Gardens, Liberties, Easements whatsoever to the same belonging or of Right appertaining, and one Croft lying on the Backside of the said Messuage, and all those three Closes of Land being in

Hipperholme

Hipperbolme aforesaid, called or commonly known by the Names of the *Field before the Door*, the *Farther Ing* and *Chapel Ing*, and all those five Closes of Land, Meadow and Pasture with the Appurtenances lying and being in N. in the said County of *York*, called or commonly known by the several Names of the *Overclose*, &c. now in the Tenure or Occupation of *S. A.* aforesaid or his Assigns, to the Use of *Thomas Heald* and his Assigns for ever: Now this Indenture witnesseth, that the said *John Thorpe* hath released to the aforesaid *Richard Thorpe* and *Thomas Heald* and their Heirs all Provisoos and Conditions in the said Deeds, Writings and Surrenders mentioned and contained, as in and by the said Deeds, Writings and Surrenders, Relation being thereunto had, more fully and at large it doth appear, and also doth now by these Presents for ever acquit and release all his Estate and Right both in Law and Equity of Redemption, Title, Claim and Demand whatsoever to the said Lands, Messuage, and all and singular the Premises and every of them, and that he the said *John Thorpe* doth by these Presents remise, release and for ever quit-claim unto *Richard Thorpe* and *Thomas Heald* aforesaid, their Heirs, Executors, Administrators and Assigns, all and all Manner of Actions, Suits, Causes and Accounts, Debts, Duties, Reckonings, Sum and Sums of Money and Demands whatsoever which he the said *John Thorpe* ever had, or which his Heirs, Executors, Administrators and Assigns, or any of them, in Time to come can or may have to, for or against the said *Richard Thorpe* and *Thomas Heald*, their Executors, Administrators or Assigns, for or by reason of any Matter, Cause or Thing whatsoever. In Witness, &c. Upon which the Plaintiff demurs, and the Defendant joins in Demurrer.

Judgment was given in the *C. B.* for the Plaintiff, and affirmed in *B. R.*

Entred of Hilary Term in the 2d Year of Queen Ann. B. R.
Roll 261.

Parkins against Wilson. 2 Ld. Raym. 1256.

Middlesex, (to wit) **B**E it remembered that heretofore, to wit, on *Monday* next after fifteen Days of Saint *Martin* in the Term of Saint *Michael* last past before the Lady the Queen at *Westminster* came
A a 4 *Thomas*

PLEADINGS TO THE CASES.

Debt in the
King's Bench
on a Recogni-
zance of
Bail.

Thomas Parkins by *Francis Hutchinson* his Attorney, and brought here into the Court of the said Lady the Queen then there his certain Bill against *Matthew Wilson*, in the Custody of the Marshal &c. of a Plea of Debt; and there are Pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said Bill follows in these Words, (to wit) *Middlesex*, (to wit) *Thomas Parkins* complains of *Matthew Wilson*, being in the Custody of the Marshal of the *Marshalsea* of the Lady the Queen before the Queen herself, of a Plea that he render to him 25*l* and 15*s*. of lawful Money of *England*, which he owes to him and unjustly detains, for that, to wit, That whereas the aforesaid *Thomas Parkins* heretofore, to wit, in this present Term in the Court of the Lady the Queen before the Queen herself at *Westminster* (the same Court being then at *Westminster* in the County of *Middlesex*) by Bill without the Writ of the said Lady the Queen, and by Judgment of the same Court recovered against one *Jonathan Wollaston* Gent. 25*l*. and 15*s*. for his Damages which he hath sustained as well by occasion of the Not-performing of certain Promises and Undertakings to him the said *Thomas* by the aforesaid *Jonathan* lately made, as for his Costs and Charges by him laid out about his Suit in that Behalf whereof he the said *Jonathan* is convicted, as by the Record thereof remaining in the Court of the said Lady the Queen before the Queen herself at *Westminster* aforesaid more fully appears: And whereas the aforesaid *Matthew Wilson* and one B. C. by the Names of *Matthew Wilson* of the Parish of *Saint Paul Covent Garden* Cooke, and B. C. of the Parish of *Saint Clement Danes* Gent. heretofore, to wit, in the Term of *Easter* last past in the same Court of the said Lady the Queen before the Queen herself at *Westminster* personally came and became Pledges and Bail, and each of them became Pledge and Bail for the aforesaid *Jonathan*, that if it should happen he the said *Jonathan* should be convicted in the Plea aforesaid, then they the said *Matthew* and B. granted, and each of them for himself did grant all such Damages, Costs and Charges which should be adjudged to the aforesaid *Thomas Parkins* in that Behalf, to be made of their and each of their Lands and Chattels, and to be levied to the Use of the aforesaid *Thomas Parkins*, if it should happen that the said *Jonathan* should not pay the said Damages, nor render himself to the Prison of the Marshal of the *Marshalsea* of the said Lady the Queen before the Queen herself upon that occasion: And he the said *Thomas* saith that the aforesaid *Jonathan* hath not yet paid those Damages to the aforesaid *Thomas*, nor hath rendered himself to the Prison of the

Marshal

Marshal of the *Marshallsea* of the said Lady the Queen before the Queen herself on that occasion, by which an Action hath accrued to him the said *Thomas* to require and have of the aforesaid *Matthew* the aforesaid 25 *l.* and 15 *s.* Nevertheless the aforesaid *Matthew*, although often requested &c. hath not yet paid the aforesaid 25 *l.* and 15 *s.* to him the said *Thomas*, but to pay the same to him hath hitherto altogether denied, and as yet doth deny, to the Damage of him the said *Thomas* of 30 *l.* and thereupon he brings Suit, &c. with this, that he the said *Thomas* will verify that the aforesaid *Matthew Wilson* one of the Pledges and Bail for the aforesaid *Jonathan Wilson* above mentioned to have so become, and the aforesaid *Matthew Wilson* the now Defendant, are one and the same Person, and not another or different; and that the aforesaid *Thomas* in the Record aforesaid mentioned, and the aforesaid *Thomas* the now Plaintiff, are one and the same Person, and not another or different; and that the Judgment aforesaid as yet remains in its full Strength, Force and Effect not reversed, annulled or satisfied.

Averment of Identity.

N. The Defendant *Wilson* pleaded in Bar, that after the giving the said Judgment against the said *Jonathan Woollaston*, and before the Day of the exhibiting the Plaintiffs Bill, no *Capias ad satisfaciendum* upon the said Judgment against the said *Woollaston* was prosecuted and returned in the Queen's Bench, &c.

The Plaintiff *Parkins* replied, that after the giving the said Judgment against the said *Woollaston*, and before the exhibiting this Bill, viz. on the 10th of *November* in the 2d Year of the Queen, the said Plaintiff did sue out of the Queen's Bench a *Capias ad satisfaciendum* against the said *Woollaston*, returnable on *Monday* next after eight Days of *Saint Martin*, &c. At which Day the Sheriff returned that the said *Jonathan Woollaston*, was not found in his Bailiwick, as by the writ of *Capias ad satisfaciendum*, and the aforesaid Return of that Writ in the said Queen's Bench at *Westminster* remaining of Record more fully appears; and this, &c.

The Defendant rejoined in this Manner:

And the aforesaid *Matthew Wilson* saith that after the giving of the Judgment aforesaid in the Declaration aforesaid specified, and before the aforesaid Writ of *Capias ad satisfaciendum*, of and upon the Judgment aforesaid against the aforesaid *Jonathan Wilson* was prosecuted, returned and assised in the Court of the said Lady the now Queen before

Rejoinder that the Defendant in the principal Action sued Error on the Judgment before the *Ca. sa.* was sued out, returned and filed.

PLEADINGS TO THE CASES.

the Queen herself at *Westminster* aforesaid, to wit, on the 20th Day of *November* in the second Year of the Reign of the said Lady the now Queen, he the said *Jonathan* for the reversing of the Judgment aforesaid prosecuted forth of the Court of Chancery of the said Lady the Queen, then being at *Westminster* aforesaid in the County of *Middlesex*, a certain Writ of the said Lady the Queen for correcting the Error in the Record and Process, and also in the giving of that Judgment, directed to the said Lady the Queen's beloved and faithful *John Holt* Knt. then, and as yet, Chief Justice of her the said Lady the Queen assigned to hold Pleas before the Queen herself; by which said Writ the said Lady the Queen commanded the aforesaid Chief Justice that if Judgment was thereupon given, then the Record and Process of the Plaint aforesaid, with all Things touching the same, he should cause to come before her Justices of the Common Bench and her Barons of the Exchequer of the Degree of the Coif in the Exchequer Chamber of the said Lady the Queen at *Westminster* on *Saturday*, to wit, the 27th Day of the then Instant Month of *November*, that the said Justices of the Common Bench and Barons of the Exchequer having seen and examined the Record and Process aforesaid, might further do thereupon in that Behalf that which of Right and according to the Form of the Statute in such Case made and provided should be meet to be done; by Virtue of which said Writ for correcting the Error, he the said Chief Justice afterwards, to wit, on the same 27th Day of *November* aforesaid transmitted the Transcript of the Record and Process of the Plaint and Judgment aforesaid with all Things touching them, before the aforesaid Justices of the said Lady the Queen of the Common Bench and Barons of the Exchequer of the Degree of the Coif in the Exchequer Chamber at *Westminster* aforesaid, where the same as yet remains, and that the aforesaid Writ for correcting the Error in the same Exchequer Chamber as yet is pending undetermined, and the Judgment aforesaid in the same Court of the said Lady the now Queen before the Queen herself as yet remains in its full Strength not annulled, as by the Record thereof in the same Court of the said Lady the now Queen before the Queen herself is more fully manifest and appears: And he the said *Matthew* further says, that after the prosecuting of the aforesaid Writ for correcting the Error, and before the Return thereof, and also before the aforesaid Writ of *Capias ad satisfaciendum* of or upon the Judgment

Judgment aforesaid against the aforesaid *Jonathan Wilson* was prosecuted, returned and affiled in the Court of the said Lady the now Queen before the Queen herself at *Westminster* aforesaid, to wit, on the 22d Day of *November* in the second Year of the Reign of the said Lady the now Queen, he the said *Matthew Wilson* and *Booth Chaderton* and *Richard Woollaston*, by the Names of *Booth Chaderton* of *Stanhope Street* in the Parish of *Saint Clement Danes* in the County of *Middlesex*, Gent. *Matthew Wilson* of *York-Street* in the Parish of *Saint Paul Covent Garden* in the County aforesaid *Cooke*, and *Richard Woollaston* of *Wormley* in the County of *Hertford* Esq; in their proper Persons came into the aforesaid Court of the said Lady the now Queen before the Queen herself at *Westminster*, and according to the Form of the Statute for avoiding of unnecessary Delays of Executions thereupon made and provided, acknowledged themselves to owe and each of them acknowledged himself to owe to the aforesaid *Thomas Parkins* 51*l.* and 10*s.* of lawful Money of *England*, to be paid to him the said *Thomas*, his Executors or Assigns, and unless they should so do, they the said *Booth*, *Matthew* and *Richard* granted, and each of them for himself did grant the aforesaid 51*l.* and 10*s.* to be made and levied of their and each of their Lands and Chattles to the Use of the said *Thomas*; upon Condition nevertheless, that if the aforesaid *Jonathan* should prosecute the aforesaid Writ of Error with Effect, and if the Judgment aforesaid should be affirmed against the aforesaid *Jonathan*, then if he the said *Jonathan* should satisfy and pay to the said *Thomas* the Damages aforesaid, and also all such Costs and Damages as should be adjudged to the said *Thomas* by occasion of the Delay of his Execution upon the Judgment aforesaid by Pretext of the prosecuting of the said Writ of Error, then that Recognizance should be void and of no Effect, as by the Record thereof in the aforesaid Court of the said Lady the now Queen before the Queen herself at *Westminster* remaining more fully appears, and this the said *Matthew* is ready to verify: Whereupon as before he prays Judgment and that the aforesaid *Thomas Parkins* may be barred from having his aforesaid Action thereof against the said *Matthew &c.*

General Demurrer, and Joinder in Demurrer.

N. This Rejoinder is clearly a Departure from the Plea, for it is new Matter, which does not agree with, or enforce the Matter of the Plea; for the Plea is, that there was no *Capias ad satisfaciendum*, and this Rejoinder says that there

was

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was a *Capias ad satisfaciendum* but it was superseded, and there is a Difference between no *Capias*, and a *Capias* superseded; for the superseding does not make it null, or no *Capias*, but only suspends the Fruit or Effect of it, and one must distinguish between the Writ itself, and the Effect of it.

Therefore the Matter of this Rejoinder ought to have been pleaded in the Plea in Bar.

Easter Term, 5 Ann. B. R. 2 Ld. Raym. 1262.

Turner against Beal.

Indeb. Assump- Declaration. UPON an *Indebitatus Assumpsit* for 100 l. for Goods sold and delivered by the Plaintiff to the Defendant June 1, 1705. upon a *Quantum Meruit*, and and *Insimul Computasset*.

Plea as to all but 37 l. Non Assumpsit. To the last Promises, and to the whole Sum of 100 l. in the first Promise, except 37 l. Part thereof, the Defendant pleaded *Non Assumpsit*, upon which Issue was joined. And as to the said 37 l. Part of the said Sum of 100 l. in the said first Promise and Undertaking mentioned, he the said *Abraham* (the Defendant) saith that he cannot deny but that he, before the 8th Day of *November* in the Year of our Lord 1703 was indebted to the aforesaid *John Turner* in the said 37 l. for the Sheep and Lambs in the said Declaration mentioned, to him the said *Abraham* by the aforesaid *John Turner* before that Time Sold and delivered, and before the same 8th Day of *November* in Consideration thereof assumed upon himself and promised to pay to the said *John*

But in stay of Execution against his Person, &c. he pleads the Stat. 2 Ann. for Insolvent Debtors. *Turner* the said 37 l. and so he cannot deny but that the aforesaid *John Turner* ought to recover his Damages by occasion of the Non-payment of the said 37 l. against him the said *Abraham*: Nevertheless he the said *Abraham* prays that his Person, and also his wearing Apparel, Bedding and the necessary Tools for his Trade, which do not exceed ten Pounds in Value, may be always discharged and free of and from every Execution by the aforesaid *John* in this Behalf to be had, according to the Form of the Statute made in the Parliament of the Lady the now Queen holden by Prorogation at *Westminster* in the County of *Middlesex* on the 9th Day of *November* in the second Year of her Reign, intituled, An Act for the Discharge out of Prison such insolvent Debtors as shall serve or procure a Person to serve in her Majesty's Fleet or Army; because he says that he the said *Abraham* on the aforesaid 8th Day of *November* in the Year of

of our Lord 1703 in the same Statute mentioned, and also before and afterward was a Prisoner actually in the Prison and Gaol of the Lady the Queen of the *Marshalsea* of her the said Lady the Queen before the Queen herself, under the Custody of *Francis Southard* Esq; Keeper of that Prison, for and concerning an Action for Debt at the Suit of *Edmund Warnford*, (the said Prison being then and as yet at *Southwark* in the County of *Surry*) and that, at the General Quarter Session of the Peace of the said Lady the Queen, holden at *Guilford* in and for the same County of *Surry* on *Thursday* the 13th Day of *July* in the third Year of the Reign of the said Lady the now Queen, before *John Fulbam* and *John Lade* Esquires and others their Fellows Justices of her the said Lady the Queen, assigned to keep the Peace in the said County of *Surry*, he the said *Abraham* then being still a Prisoner in Form aforesaid, by the same Justices of Peace in that open Court, by Virtue and according to the Form of the Statute aforesaid, was in due Manner released and discharged from his Imprisonment aforesaid, without this, that he the said *Abraham* upon or after the aforesaid 8th Day of *November* in the Year of our Lord 1703 aforesaid assumed upon himself as to the said 37 *l.* in Manner and Form as the aforesaid *John* above thereupon supposes, and this he is ready to verify: Whereupon he prays Judgment if the aforesaid *John Turner* ought to have any Execution in this Behalf to charge the Person of him the said *Abraham*, or his Wearing Apparel, Bedding, or the necessary Tools aforesaid, &c. And the aforesaid *Abraham* brings here into Court the Duplicate of the Order of that Discharge signed and sealed with the Hands and Seals of the said two Justices of the Peace, which testify the Premises, the Date whereof is in the said General Quarter Session of the Peace at *Guilford* aforesaid the said 13th Day of *July* in the third Year aforesaid, &c.

That he was a Prisoner on and before the 8th of *November* 1703 for Debt.

That at the General Quarter-Sessions for *Surry* he was discharged out of Prison.

Traverse of the Time of the Debt.

Profert in Curiam of the Duplicate of the Order of Discharge.

L. Agar.

And the aforesaid *John Turner* saith that he, by any Thing by the aforesaid *Abraham* above in pleading alledged, ought not to be barred from having his Execution for his Damages to be recovered in this Behalf by occasion of the Non-payment of the aforesaid 37 *l.* against the Person of the aforesaid *Abraham*, and all his Goods and Chattels; because he saith, that the Plea aforesaid by the aforesaid *Abraham* above pleaded and the Matter therein contained are not sufficient in Law to bar him the said *John* from having

Demurrer.

having

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having his Execution thereof against the Person of the aforesaid *Abraham*, and all his Goods and Chattles, to which he the said *John* hath no Necessity, nor is he bound by the Law of the Land in any Manner to answer, and this he is ready to verify: Whereupon for want of a sufficient Answer in this Behalf, he the said *John* prays Judgment and his Damages by occasion of the Premisses to be adjudged to him to be made and levied by Execution against the Person of the aforesaid *Abraham*, and all his Goods and Chattels, at the free Will and Pleasure of him the said *John* &c.
T. Pengelly.

Joinder in
Demurrer.

And the aforesaid *Abraham* saith that the Plea aforesaid by him the said *Abraham* in Manner and Form aforesaid above pleaded and the Matter therein contained are good and sufficient in Law to bar the aforesaid *John* from having his Execution thereof against the Person of him the said *Abraham*, and his Wearing Apparel, Bedding, and the necessary Tools for his Trade, which do not exceed 10*l.* in Value; which said Plea and the Matter therein contained he the said *Abraham* is ready to verify and prove to the Court, &c. And because the aforesaid *John* doth not answer to that Plea, nor hath hitherto in any wise denied it, he the said *Abraham*, as before, prays Judgment, and that the aforesaid *John Turner* may be barred from having every Execution whatsoever in this Behalf to charge the Person of him the said *Abraham* or his Wearing Apparel, Bedding or Tools aforesaid, &c.

Nota; The Plea was held to be bad, even upon a general Demurrer, because the necessary Facts were not averred therein to intitle the Justices of Peace to a Jurisdiction: For the Defendant ought to have expressly and particularly shewn to the Court in his Plea that he petitioned, and that the Person at whose Suit he was detained in Prison was summoned, that he enlisted himself for a Soldier in the Queen's Service, &c. as the Statute has directed; and for this Defect, there was Judgment for the Plaintiff.

Mandamus
to restore Mr.
Baines to the
Office of
Clerk of the
Peace of the
County of
Westmoreland.

Easter Term, 5 Ann. B. R.

The Queen against *Baines*. 2 *Ld. Raym.* 1265.

ANNE by the Grace of God of England, Scotland, France and Ireland Queen, Defender of the Faith, &c. To the Conservators of our Peace, and to our Justices assigned

ed to keep the Peace in and for our County of *Westmoreland*, and also to hear and determine divers Felonies, Trespasses and other Misdemeanors committed in our said County, and to every of them, greeting: Whereas *Richard Baines* Gent. was duly named and appointed Clerk of the Peace of the County aforesaid, by the most noble *Thomas* Lord *Wharten*, late Keeper of the Rolls of our Peace in our County of *Westmoreland* aforesaid; which said *Thomas* Lord *Wharten* then had full Power and Authority (as *Custos Rotulorum* of the same County) to name and appoint him the said *Richard Buines* Clerk of the Peace of the same County to have and to hold the Office of Clerk of the Peace of the County aforesaid so long as he should well demean himself; and he the said *Richard* was in due Manner and rightly admitted to the aforesaid Office and the Exercise thereof, by Virtue whereof the said *Richard* was and is justly intitled to the Exercise of the Office aforesaid and to take the Profits thereof: Nevertheless you the aforesaid Justices have unjustly removed him the said *Richard* from the Execution of the Office aforesaid, and do refuse him to execute the said Office, to the grievous Damage of him the said *Richard*, as we are informed by his Complaint: Therefore we, willing that quick and speedy Justice be done in this Behalf to him the said *Richard Baines*, as it is Just, command you, firmly injoining that immediately after the Receipt of this Writ, you restore him the said *Richard Baines* to the Execution of the aforesaid Office of Clerk of the Peace of the County aforesaid, and permit him to execute that Office and to take the Profits thereof, or that you shew Cause to us to the contrary, least Complaint come to us again by your Defaults; and in what Manner this our Command shall be executed that you make to appear to us at *Westminster* on *Saturday* next after eight Days of *Saint Hilary*, then sending back to us this Writ. Witness *J. Holt* Knt. at *Westminster* the 24th Day of *November* in the first Year of our Reign.

By Rule of Court.

To which Writ the Justices of Peace made this following Return:

We *Christopher Musgrave* Knt. and Bart. *Christopher The Return.*
Philipsen Knt. &c. the Keepers of the Peace and Justices
 in the Writ to this Schedule annexed within written, do
 most humbly certify to the most serene Lady the now Queen
 in the Court of her the said Queen before the Queen her-
 self

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self at *Westminster*, That *Richard Baines* in the same Writ named, being Clerk of the Peace for the County of *Westmoreland* aforesaid, by Pretext thereof at the General Quarter Session of the Peace of the said Lady the Queen holden at *Appleby* in and for the County of *Westmoreland* aforesaid on the 13th Day of *April* in the first Year of the Reign of the said Lady the Queen, before the then Justices of the said Lady the Queen assigned to keep the Peace in and for that County, and also to hear and determine divers Felonies, Trespasses, and other Misdemeanors committed in the County of *Westmoreland* aforesaid during all that Session, and also at the General Quarter Session of the Peace of the said Lady the Queen holden at *Kirkby in Kendall* in and for the County of *Westmorland* aforesaid on the 14th Day of *July* in the first Year aforesaid, before *Christopher Musgrave* Knt. and Bart. *Richard Sandford* Bart. *Christopher Philipson* Knt. *James Grabme*, *William Fleming*, *Henry Grabme*, *Edward Wilson* the Elder, *Richard Bratbwait*, *James Bird*, and *Thomas Dawes* Esquires, and *John Archer* Doctor in Physick, then Justices of the said Lady the Queen assigned to keep the Peace in and for the same County, and also to hear and determine divers Felonies, Trespasses and other Misdemeanors committed in the same County exercised and executed the aforesaid Office of Clerk of the Peace for that County; and that afterwards and before the coming of the Writ aforesaid, to wit, at the aforesaid General Quarter-Session of the Peace above last mentioned, a certain Complaint and Charge in Writing was exhibited to the Justices of Peace in that Session complaining and accusing the said *Richard Baines* of divers ill Behaviours committed in the Execution of the aforesaid Office of Clerk of the Peace for the same County, for that at the aforesaid then last Quarter Session of the Peace he the said *Richard Baines* did force one *John Scott* of *Woodside* Labourer, to pay nine Shillings of lawful Money of *England* more than his just Fees; and also that the aforesaid *Richard Baines* on the 10th Day of *April* in the first Year of the Reign of the said Lady the now Queen aforesaid did exact from one Prisoner *Langborne*, and compel him to pay and expend the Sum of eight Shillings and six Pence of the like Money of *England*, for a certain Process called a *Subpœna*, to summon four Witnesses to give Evidence on the Behalf of him the said Prisoner in the Sessions, which said Process called a *Subpœna* contained twelve Lines and no more; and that at the same General Quarter Session of the Peace holden the same 14th Day of *July* in the first Year aforesaid, upon full Examination

ation and due Proof of the Truth of the Matters alledged
 against the said *Richard Baines* (as before is said) made and
 had openly in the same Session in the Presence of the afore-
 said *Richard Baines* (who being by Order of the same Ses-
 sion duly summoned to answer to those Matters as aforesaid
 said to his Charge, appeared at the same Session in his pro-
 per Person and defended himself by Counsel learned in the
 Law), the aforesaid *Richard Baines* was thereof convicted,
 therefore it was considered by the Court of that General
 Quarter Session, that the aforesaid *Richard Baines* should
 be removed and discharged from the Office of Clerk of the
 Peace of the aforesaid County of *Westmorland*; and the
 same *Richard Baines* thereupon before the coming of the
 Writ aforesaid in the open and full Court of that Session,
 was removed and discharged by that Court from the said
 Office: And the aforesaid now Keepers of the Peace and
 Justices in the Writ aforesaid within written further certi-
 ficate, that the aforesaid *Richard Baines* was not named or ap-
 pointed to be Clerk of the Peace for the County of *West-*
morland aforesaid to execute that Office at any Time after
 the aforesaid Removal and Discharge of him the said *Rich-*
ard Baines from his Office aforesaid; and that the most no-
 ble *Thomas* Earl of *Thanet* being Keeper of the Rolls of
 the Peace of the Lady the now Queen in and for the Coun-
 ty of *Westmorland* aforesaid in due Manner assigned and
 constituted, to whom of Right it belongs to name and
 appoint a Clerk of the Peace for the County of *Westmor-*
land aforesaid, after the Removal and Discharge of the a-
 foresaid *Richard Baines* from the Office of Clerk of the
 Peace for the County of *Westmorland* aforesaid, and before
 the coming of this Writ, did name and appoint one *Thomas*
Carleton Gent. to be Clerk of the Peace of the County a-
 foresaid, the same *Thomas Carleton* being then a Person a-
 ble and sufficient, resiant in the said County of *Westmor-*
land, to execute the Office aforesaid as long as he should
 well demean himself: And for this Cause we the aforesaid
 Keepers of the Peace and Justices as aforesaid within writ-
 ten cannot restore the aforesaid *Richard Baines* to the Place
 and Office of Clerk of the Peace for the County of *West-*
morland aforesaid, as by the aforesaid Writ we are com-
 manded.

N. See the Report, which points out in what Respects
 the Order of the Justices is holden to be bad, and so the Re-
 turn was ill.

Entred of Hilary Term 3 Ann. B. R. Roll 169.

Dunn who as well, &c. *against* Hinchdy. 2 Ld. Raym.
1275.

An Action
qui tam, &c.
for making
and selling
Buttons of
Wood only.
10 W. 3, c. 2.

Buckinghamshire, (to wit,) **G**EORGE Dunn who sues as well for our Lady the now Queen as for himself in this Behalf complains of *Joseph Hinchdy*, being in the Custody of the Marshal of the *Marshallsea* of the said Lady the Queen before the Queen herself, of a Plea that he render to the said Lady the Queen and to him the said *George*, who sues as well, &c. twenty-four Pounds which he oweth to the said Lady the Queen and to the said *George*, who sues as well, &c. and unjustly detains, for that, to wit, That whereas the aforesaid *Joseph* after the 10th Day of *February* in the Year of our Lord 1698, to wit, on the 6th Day of *June* in the 3d Year of the Reign of the said Lady the now Queen within this Kingdom of *England*, to wit, at *Stony Stratford* in the County of *Bucks* aforesaid, did cause to be made and did sell twelve Dozens of Buttons of Wood only and turned, in Imitation of other Buttons, contrary to the Form of the Statute in such Case thereupon lately made and provided, by which he the said *Joseph* according to the Form of the Statute in such Case thereupon made and provided hath forfeited to the said Lady the Queen and to him the said *George*, who sues as well, &c. forty Shillings for every Dozen thereof, in the Whole amounting to the aforesaid 24 *l.* and thereupon an Action hath accrued to the said Lady the Queen and to him the said *George*, who sues as well, &c. to require and have of the aforesaid *Joseph* the said 24 *l.* Nevertheless the aforesaid *Joseph* although often requested, hath not yet paid the aforesaid 24 *l.* or any Part thereof, to the said Lady the Queen and him the said *George*, who sues as well, &c. or to either of them, but to pay the same to the said Lady the Queen or to the said *George*, who sues as well, &c. hath hitherto wholly denied, and yet doth deny; whereupon he the said *George*, who sues as well for the said Lady the Queen as for himself in this Behalf says that he is injured, and hath sustained Damage to the Value of thirty Pounds, and thereupon he brings Suit, &c.

N. B. Some of these Declarations conclude thus: And thereupon he brings Suit as well for the said Lady the Queen

as

as for himself, &c. But this is understood, and Precedents are both Ways. *Trin. 13 Ann. Walter v. Laughton B. R.* so resolved that either Way is good.

Trinity, 8 Ann. B. R.

Smith against Bowen. 2 Ld. Raym. 1289.

BOWEN was tried and convicted at the Old Bayly of the Murder of *William Smith*; *George Smith* (an Infant of 6 Years old) the Brother and Heir of *William S.* brought an Appeal in proper Person, at the same Sessions *Bowen* was arraigned thereupon: The Appeal being removed into the Queen's Bench, the Court upon Inspection of the Appellant saw he was an Infant, and therefore the Appeal being brought by him in proper Person was erroneous; therefore they abated the Appeal *ex Officio*, and gave the Appellant leave to file a new Bill of Appeal by Guardian, whereupon *Bowen* was arraigned *instantly*: And thereupon the following Entry perused and approved by Lord C. J. *Holt* was drawn up and entred on the Roll of the first Appeal, as of the first Day of the Term.

An Appeal abated by the Court, *ex Officio*, because the Appellant being under Age brought it in Person.

And now at this Day, to wit, *Wednesday* next after fifteen Days of *Easter* in this same Term before the Lady the Queen at *Westminster* cometh *John Bowen*, in the Custody of the Sheriff of *Middlesex*, being brought into Court here by Virtue of a Writ of the said Lady the Queen of *Habeas Corpus* directed to the same Sheriff of *Middlesex*, and he is instantly committed to the Custody of the Marshal of the *Marshalsea* of the said Lady the Queen there to remain, &c. And the aforesaid *George Smith* the Brother and Heir of the aforesaid *William Smith* likewise cometh here in Court in his proper Person, and thereupon, because by the Inspection of the Body of the said *George Smith* by the Court of the said Lady the Queen here, it manifestly appears to the same Court of the said Queen here that the aforesaid *George Smith* at the Time of the exhibiting of the aforesaid Bill of Appeal against the aforesaid *John Bowen* as before is set forth, was, and now is within the Age of twenty and one Years; and because the aforesaid *George Smith* (so being within the Age of twenty and one Years) hath prosecuted the aforesaid Bill of Appeal in his proper Person, and not by his Guardian or Keeper, or next Friend, against the aforesaid *John Bowen*, therefore it is considered by the Court of the said Lady the Queen now here, that

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the aforesaid Bill of Appeal by the aforesaid *George Smith* so as aforesaid exhibited in h's proper Person be abated, &c. and that the aforesaid *George Smith* take nothing by his Bill aforesaid, and that the aforesaid *John Bowen* go thereupon without Day, &c.

Trinity Term in the 11th Year of King George.

The King against John Ward Esq; 2 Ld. Raym. 1461.

The Attorney General, by the Order of the House of Lords, filed the following Information against the Defendant.

An Information by the Attorney General for Forgery.

Middlesex, (to wit) **B**E it remembered that *Philip Yorke* Knt. Attorney General of the Lord the King, who prosecutes for the said Lord the King in this Behalf, in his proper Person cometh here in the Court of the said Lord the King before the King himself at *Westminster* on *Wednesday* next after three Weeks of the Holy *Trinity* in this same Term, and for the said Lord the King gives the Court here to understand and be informed, that *John Ward* of *Hackney* in the County of *Middlesex* Esq; being obliged to deliver three Hundred and fifteen Tons and one half of a Ton of Allum of the Value of five Thousand Pounds to the most noble *Edmund Duke* of the County of *Buckingham* and of *Normanby* at a certain Day now past, he the said *John Ward* wickedly contriving and intending to deceive and defraud the aforesaid Duke of the aforesaid Allum, and with an iniquitous and fraudulent Intention to avoid the Delivery of the same Allum, on the first Day of *February* in the 11th Year of the Reign of the Lord *George* by the Grace of God of Great Britain, France and Ireland King, Defender of the Faith, &c. at *Westminster* in the County of *Middlesex* with Force and Arms, &c. upon the Backside of a certain Certificate in Writing signed with the Hand of one *Ambrose Newton*, did falsly forge and counterfeit and cause to be forged and counterfeited a certain Writing in the Words and Figures following, that is to say,

"Schedule"	{	Tons. C.	Mr. John Ward I do hereby order you to charge the Quantity of six Hundred and sixty Tons and one Quarter of Allum to my Account Part of the Quantity here mentioned in this Certificate, and out of the Money arising by the Sale of Allum in your Hand pay to Mr. W. Ward and your
		660 : 5	
		315 : 5	
		975 : 10	

ten Pounds for every Ton according to Agreement; and for so doing this shall be your Discharge. Buckingham. April 30, 1706." To the evil Example of all other Delinquents in such Case, to the grievous Damage of the aforesaid Duke, and against the Peace of the said Lord the now King, his Crown and Dignity. And the said Attorney General of the Lord the King, for the said Lord the King further gives the Court here to understand and be informed that the aforesaid *John Ward* being obliged to deliver three Hundred and fifteen Tons and one quarter of a Ton of Allum of the Value of five Thousand Pounds to the aforesaid Duke at a certain Day now past, he the said *John Ward* wickedly contriving and intending to deceive and defraud the aforesaid Duke of the aforesaid Allum, and with an iniquitous and fraudulent Intention to avoid the Delivery of the same Allum, afterwards, to wit, on the said first Day of *February* in the abovesaid 11th Year of the Reign of the said Lord the now King at *Westminster* in the County of *Middlesex* with Force and Arms, &c. a certain Writing falsely forged and counterfeited on the Backside of a certain Certificate in Writing signed with the Hand of one *Ambrose Newton*, did wickedly, unlawfully and fraudulently publish and cause to be published, which said Writing falsely forged and published followeth in these Words and Figures following, that is to say, [and then it is set out again] he the said *John Ward* then and there well knowing the said Writing, by him the said *John Ward* as aforesaid published, to be false and counterfeited, to the great Damage of the aforesaid Duke, and against the Peace of the said Lord the now King, his Crown and Dignity, &c.

Entred of Mich. Term, 1 Geo. 2. N. 2.

The King against Sir Edmund Elwell, Joseph Billers Esq;
and Daniel Monty Esq; 2 Ld. Raym. 1514.

Kent, (to wit) **B**E it remembered that on the 15th Day of *September* in the first Year of the Reign of our Lord *George the Second* by the Grace of God of *Great Britain, France and Ireland* King, Defender of the Faith, &c. at *Beckenham* in the County of *Kent*, *Elizabeth Elwell* complains to us *E. B. P. B.* and *W. P.* three of the Justices of the said Lord the King assigned to keep the Peace in and for the said County of *Kent*, and which was removed by also to hear and determine divers Felonies, Trespasses and other *Certiorari*,
A Conviction of a forcible Detainer upon View of 3 Justices of Peace,

and the Bodies
of Defendants
brought up by
Hab. Corpus.

other Misdemeanors committed in the said County, That *Edmund Elwell* late of *London* Bart. *J. B.* and *D. M.* did enter into the Messuage of her the said *Elizabeth*, and being the Mansion-house of her the said *Elizabeth Elwell* called *Langley-House*, situate within the Parish of *Beckenham* aforesaid, and her the said *E. E.* out of her Messuage aforesaid whereof she the said *E. E.* at the Time of the Entry aforesaid was seised as of the Freehold of her the said *E. E.* for the Term of her Life, unlawfully ejected, expelled, amoved, and that Messuage from her the said *Elizabeth* unlawfully with a strong Hand, and an armed Power, as yet hold and detain, contrary to the Form of the Statute in such Case made and provided; whereupon she the said *E. E.* then, to wit, the same 11th Day of *September* at the Parish of *B.* aforesaid prays of us, being so Justices as aforesaid, a fitting Remedy to be applied to her in this Behalf according to the Form of the Statute, &c. which said Complaint and Petition being heard by us the aforesaid Justices, we the aforesaid *E. B.* Bart. *P. B.* and *W. P.* the aforesaid Justices, personally went to the Messuage aforesaid, and then and there found and saw the aforesaid *E. E. J. B.* and *D. M.* detaining the aforesaid Messuage with Force and Arms, unlawfully with a strong Hand and an armed Power, contrary to the Form of the Statute in such Case made and provided, as she the said *Elizabeth Elwell* (as before is set forth) complains to us: Therefore it is considered by us the aforesaid Justices that the aforesaid *Edmund Elwell*; *Joseph Billers* and *Daniel Monty* are convicted, and each of them is convicted of the forcible Detainer aforesaid upon our own View then and there as aforesaid had, according to the Form of the Statute aforesaid; upon which we the aforesaid Justices caused the aforesaid *E. E. J. B.* and *D. M.* then and there to be arrested: And they the said *E. E. J. B.* and *D. M.* being convicted, and each of them being convicted upon our own View of the forcible Detainer aforesaid (as before is set forth) are committed, and each of them is committed by us the aforesaid Justices to the Gaol of the said Lord the King of the County aforesaid at *Maidstone* in the County aforesaid, being the next Gaol to the aforesaid Messuage, there to remain until they shall make Fine, and each of them shall make Fine to the said Lord the King for their respective Offences aforesaid, of which said Premises abovesaid we have caused to be made this Record. In Witness whereof we the aforesaid *E. B.* Bart. *P. B.* and *W. P.* Esquires, the
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PLEADINGS TO THE CASES.

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Justices aforesaid, have set our Hands and Seals to this Record at the Parish of *Beckenham* aforesaid in the County of *Kent* aforesaid the said 15th Day of *September* in the first Year of the Reign of the said Lord the now King above said.

E. Bettenfon,
P. Burrell,
W. Passenger.

N. This Conviction was held naught, and quashed, because the Defendants were committed to lie in Prison until they should pay their Fine, and no Fine was set, therefore see the Report,

E. H. W. C.

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<i>Disfringas</i> awarded.	<i>ibid.</i>
<i>Nisi Prius</i> at <i>Norwich</i> .	<i>ibid.</i>
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Custom within the Hundred of *Huntspill* and *Puriton* in the Parish of *Huntspill Somersetsbire*, that every occupier of Land within the Hundred should be discharged of Tithes of Agistment of barren Cattle, not employed to the Plough, nor for the Pail; that the Plaintiff was an Inhabitant for five Years past, and yet is, within the Hundred, and occupies Land there, and was and yet is possessed of divers barren Cattle, for the Tithes of which (notwithstanding the said Custom) the Defendant libelled against the Plaintiff in the Spiritual Court, &c. and he declares also upon several Modus's for Tithes of Lambs, &c. and that the Defendant sued for Tithes of them, &c. The Defendant traverses the Modus's and the Custom, and demurs to Part of the Declaration.

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Count in *Quare Impedit* of the Church of *Bedall*, by the Crown, sets out that Queen *Elizabeth* was seised in Fee of the Advowson in Gros, who presented *Tyms*, who was admitted, &c. That the Queen died seised of the Advowson which descended to King *James* the First, who was seised, and the Church being void by the Death of *Tyms*, he presented *Wilson*, who was admitted, &c. That *James* the First died seised, and the Advowson descended to *Charles* the First, who was seised, and the Church being void by the Death of *Wilson*, he presented Doctor *Wickham*, who was admitted, &c. That the Church became void by the Death of Doctor *Wickham*,

John

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John Piers presented *Metcalse* by Usurpation; that *Charles* the First died seised, and the Advowson descended to *Charles* the Second: That the Church became void by the Death of *Metcalse*, and *Charles* the Second presented *Doctor Samways*, who was admitted, &c. That *Charles* the Second died seised, and the Advowson descended to *James* the Second, who being seised thereof abdicated the Realm, by which the Advowson came to the now King and Queen, who are now seised thereof, and the Church became void by the Death of *Doctor Samways*, whereupon it belongs to the King and Queen to present, but Defendants hinder them, &c. Page 263 to

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Count in *Quare Impedit* by an Executor of the Grantee of the next Turn, sets forth an Indenture of Agreement between Joint-tenants to present by Turns, and brings down the Title to the Plaintiff.—Defendants plead that the Bishop collated by Lapse.—Plaintiff replies and admits the Time of the last Avoidance, but further says that within six Months his Testator by Writing presented *J. S.* and requested the Bishop to admit him, but refused.—Rejoinder admits the Presentation, but says that *J. S.* took it away and desired Time to prepare himself for Examination, and never came again to the Bishop to be examined, so the Bishop collated *J. B.* the other Defendant, and traverses that he refused to admit *J. S.*—Surrejoinder takes Issue upon the Traverse, *Venire facias* awarded, the Sheriff *non misit breve*, *Nisi prius*, *Postea*, Verdict that the Bishop refused to admit *J. S.* upon the Presentation of the Plaintiff's Testator, and that the Church is full of the Collation of the Bishop, and is of the yearly Value of 120 *l.* and the Jury assess 40 Shillings Costs, which are not respected, there being no Costs by Law in *Quare Impedit*.—Final Judgment and a Writ to the Archbishop awarded.—Error brought and Errors assigned, Diminution alledged, *Certiorari* to the *Custos Brevium* of the *C. B.* to search for and send the original Writ to the King's Bench. The original Writ; *In nullo est erratum* pleaded.

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Defendants make Conuzance as Bailiffs of the Lord of the Manor, and set out a Prescription to hold a Court-Leet and for the Homage to chuse a Constable, who is to take the Office and an Oath for the due Execution of it under a Penalty to be imposed by the Homage; that the Plaintiff was chosen Constable by the Homage, and refused to take on him the Office, and the Oath, wherefore Plaintiff was fined 40*s.* for the Non-payment whereof the Defendants acknowledge the taking of the Mare.—Demurrer to the Conuzance, and Joinder. 83, 84, 85, 86
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Bar to the Cognizance that *Queen Elizabeth* was seised in Fee in Right of her Dutchy of *Lancaster*, and granted two Fairs to the Bailiffs, &c. of the Borough of *Daventree*, and that the Plaintiff at one of the said Fairs bought the said Sheep and paid the Toll for it, and had it in his Custody until the Defendants unjustly took it, &c. 216, 217
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Defendants makes Cognizance as Bailiffs of the Lord of the Manor, that they took the Pan for Rent in Arrear and Suit of Court not done. 233, 234
Plaintiff in Bar, protesting that the Lord of the Manor was not seised of the Services aforesaid, for Plea says that *H. T.* held the Tenements of the said Lord of his Manor of *M.* by Rent of 4*s.* *per Ann.* payable at the Feast of Saint *Michael* only; and traverses that he held the same by the Rent

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Rent of 4 s. *per Ann.* and Suit of Court.--- Replication takes Issue upon the Traverse. Page 234, 235

Venire facias, and *Nisi prius* awarded, *Postea*, *Tales*, special Verdict, (among other Things) finds that there is now and for 20 Years last past there hath been one only Freehold Tenant or Free Suitor within the said Manor of *M.* and that there are several Customary and Conventi-
tionary Tenants and Suitors of the same Manor.

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Statute of 14 *Car* 2. against Gaming pleaded to an Action on a Bill of Exchange given for Money lost at *Hazard*.

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Declaration for an Assault and Battery.—Plea Not guilty as to the Force and Arms and Wounding, and as to the Residue of the Trespass the Defendant justifies in Defence of his Possession in a Close in *C.* and traverses that he is guilty at *H.*—Replication with a Traverse after the said Traverse.—Special Demurrer and Joinder.

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Declaration against two Defendants for breaking the Plaintiff's Close called *Hornet-bill* in the Parish of *R.* treading down the Grass, depasturing the Grass, and for chasing, taking and impounding the Plaintiff's Sheep.—One of
his

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the Defendants pleads (by his Attorney, the other, by his Guardian) Not guilty to all the Trespasses except the chasing and impounding, and as to that the Defendants justify for Damage feasant in *the new Orchard*, and traverse the Place in the Declaration.—Special Demurrer.

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Declaration in Trespass for taking away the Plaintiff's Negro Slave. 134

Not guilty, and special Verdict. 134, &c.

Declaration for breaking the Plaintiff's Close and taking three Cows. 138

One of the Defendants pleads Not guilty generally to the Whole, Issue joined thereon.—The others plead Not guilty as to the Force and Arms, &c. and breaking and entering, and justify the taking the Cows as a Distress for Rent. 139

Replication that the Cattle were not levant and couchant. 141

Rejoinder that they were, and Issue joined. ibid.

Venire awarded, *Nisi prius*, *Postea*, Verdict and final Judgment. 141, &c.

Declaration for taking and driving away the Plaintiff's Cattle. 150

Not guilty as to the Force and Arms, and as to the Residue of the Trespass the Defendant justifies under a *Levari facias* grounded upon an Outlawry certified into the Court of Exchequer. 150, 151, 152, 153

Declaration in Trespass, Assault and Imprisonment against the Censors, &c. of the College of Physicians.—Plea Not guilty as to the Force and Arms, Beating and Wounding, and Issue thereupon. As to the Residue they justify under the Letters Patent of *Henry* the 8th, granted to the College of Physicians, confirmed by the Statutes of 15 *H.* 8. and the 1 *Mar.* which are all set forth, and that the Defendant had practised Physick contrary to the said Letters Patent and Statutes.—Replication (with several Protestandos) *De Injuria sua propria*.—Demurrer with special Causes shewn, Joinder in Demurrer. 289 to 302

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For Cattle, Goods and Chattels. 77

For a Box and 100 Pieces of Gold Coin called Guineas. 82

Trover for a Silk Waistcoat.—Plea in Bar confesses the Conversion, but pleads that the Plaintiff did discharge and and

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and acquit the Defendant in Consideration of a Promise made by him to pay Plaintiff 20*s*. Page 118, 119
Trover for an Anchor, Sails, and 3 Cables. 153
Not guilty.—Special Verdict finding a Custom for the Mayor and Burgesses of *Newcastle upon Tyne* to repair the Port there, and to receive a Toll upon Coals exported from thence, and that the Water-Bailiff has been accustomed to distrain for the same upon Refusal to pay it; that the Defendant was Water-Bailiff, and found the Plaintiff's Ship loaded with Coals ready to be exported, demanded of Plaintiff the Toll for the said Coals, who refused to pay the same, and therefore the Defendant took the Goods and Chattels in the Declaration, being Part of the Tackle of the said Ship, as a Distress for the Non-payment of the Toll, and concludes in the usual Form. 153, 154, 155, 156
Declaration by the Survivor of three Joint Merchants for a Ship and other Goods to the Value of 20000*l*.—Plea in Bar that they were Joint Merchants, and so there ought to be no Survivorship; that one of the Merchants (Plaintiffs) made a Will and an Executor who proved it, and is living, and that the other deceased Merchant made a Will and an Executor who proved it, and is living. 352 to 354

Venire facias, and *Habeas Corpora Juratorum* awarded.

Venire facias awarded in *C. B.* 70, 141
The like in *B. R.* 78, 103, 134,
Venire awarded as well to try the Issue, as to inquire of Damages if Judgment shall happen to be for the Plaintiff on the Demurrer in Law. 101

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Upon the General Issue in a special Action upon the Case, found for the Plaintiff as to Part, and for the Defendant as to Part. 71
Special Verdict in an Action of Trover; finds that *J. S.* was seised in Fee of Land in *C.* and *A.* and demised the same to *W. W.* Father of the Plaintiff for 21 Years, under a certain Rent, who entered and was possessed, and that 4*l*. and 8*d*. being in Arrear, the Defendant, by the Order of the Landlord's Bailiff, (the Landlord being beyond Seas) distrained upon the Lands demised, lying in two Hundreds, and gave Notice of the Cause of the Distress

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Distress according to the Statute, intituled An Act for enabling the Sale of Goods distrained for Rent, &c. and further finds that no Replevin was sued out, and that after five Days expired the Defendant with a Constable caused the Goods to be appraised, and afterwards sold the same, and that the Goods sold were not of the Value of the Rent, and the Rest unfold he hath in his Hands, and concludes in the common Form of special Verdicts.

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Special Verdict setting forth a Feoffment in Fee to the Use of *A.* the Feoffer for Life, Remainder to his Son *B.* and his Heirs, and for Default of such Issue, Remainder to the right Heirs of *A.* also setting forth *B.*'s Will, &c. &c.

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Special Verdict in Trespass concerning the Property of a Negro Slave.

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153, &c.

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